



Delegated Decisions by Cabinet Member for Education & Cultural Services

***Wednesday, 16 October 2019 at 10.00 am
Council Chamber, County Hall, New Road, Oxford***

Items for Decision

The items for decision under individual Cabinet Members' delegated powers are listed overleaf, with indicative timings, and the related reports are attached. Decisions taken will become effective at the end of the working day on 24 October 2019 unless called in by that date for review by the appropriate Scrutiny Committee.

Copies of the reports are circulated (by e-mail) to all members of the County Council.

These proceedings are open to the public

A handwritten signature in blue ink, appearing to read 'Yvonne Rees'.

Yvonne Rees
Chief Executive

October 2019

Committee Officer: **Deborah Miller**
Tel: 07920 084239; E-Mail: deborah.miller@oxfordshire.gov.uk

Note: Date of next meeting: 13 November 2019

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

Items for Decision

1. **Declarations of Interest**
2. **Petitions and Public Address**
3. **Questions from County Councillors**

Any county councillor may, by giving notice to the Proper Officer by 9 am two working days before the meeting, ask a question on any matter in respect of the Cabinet Member's delegated powers.

The number of questions which may be asked by any councillor at any one meeting is limited to two (or one question with notice and a supplementary question at the meeting) and the time for questions will be limited to 30 minutes in total. As with questions at Council, any questions which remain unanswered at the end of this item will receive a written response.

Questions submitted prior to the agenda being despatched are shown below and will be the subject of a response from the appropriate Cabinet Member or such other councillor or officer as is determined by the Cabinet Member, and shall not be the subject of further debate at this meeting. Questions received after the despatch of the agenda, but before the deadline, will be shown on the Schedule of Addenda circulated at the meeting, together with any written response which is available at that time.

4. **Amendments to Premises Arrangements for Early Years and Childcare Providers Operating on School or Council Sites** (Pages 1 - 14)

Forward Plan Ref: 2019/096

Contact: Joanne Booker, School Organisation Officer Tel: 07393 001258

Report by Corporate Director for Children's Services (**CMDECS4**).

The premises arrangements for third party early years and childcare providers occupying school and council sites was approved by Delegated Decision in 2014. Since then, national initiatives have expanded and extended childcare entitlements for parents.

The Council has statutory obligations around the sufficiency of places and commissions a mixed market of providers to deliver the early education and childcare entitlements. The proposed updated premises arrangements have been a collaboration between the estates and early years teams, clarifying arrangements and simplifying the information on costs.

The Cabinet Member for Education & Cultural Services is RECOMMENDED to approve the updated premises arrangements for third party providers occupying school or council sites.

Division(s): N/A

CABINET MEMBER FOR EDUCATION & CULTURAL SERVICES –16 OCTOBER 2019

PREMISES ARRANGEMENTS FOR PROVIDERS SUPPORTING THE COUNTY COUNCIL’S STATUTORY OBLIGATIONS REGARDING SUFFICIENCY OF EARLY YEARS AND CHILDCARE PLACES OPERATING ON SCHOOL OR COUNCIL SITES

Report by Director for Children’s Services

RECOMMENDATION

The Cabinet Member for Education & Cultural Services is RECOMMENDED to approve the updated premises arrangements for third party providers occupying school or council sites.

Executive Summary

1. The premises arrangements for third party early years and childcare providers occupying school and council sites was approved by Delegated Decision in 2014. Since then national initiatives have expanded and extended childcare entitlements for parents. The Council has statutory obligations around the sufficiency of places and commissions a mixed market of providers to deliver the early education and childcare entitlements. The proposed updated premises arrangements have been a collaboration between the estates and early years teams, clarifying arrangements and simplifying the information on costs.

Introduction

2. Since the premises arrangements for early years and childcare on school or council sites was approved in 2014, there have been many significant developments and changes in national policy for both funded early education and the provision of childcare.
3. These include an extended entitlement for working parents to 30 hours free childcare per week¹ and the right of parents to request out of school childcare facilities on school sites². The government’s expectation is that all early education and childcare provision becomes more flexible in line with parental demand; with provision running longer in a day and across more weeks of the year.
4. These changes are against a background of the availability and affordability of childcare being a significant concern, since national allocations haven’t risen in the last two years, despite uplifts in the living wage and pension contributions raising costs for employers.

5. The proposed amendments seek to balance the tensions around the council needing to generate income through its property portfolio, with ensuring childcare providers remain sustainable, since the council's statutory duties around ensuring the supply of sufficient early years and childcare depends upon it.

Main Changes

6. Key changes proposed from the current policy agreed in December 2014 (and attached as Annex 1) are set out below.

- a) The Agreements must be negotiated by OCC's Estates Departments. As Property owner OCC will be named on the premises Lease/Licence (Agreement) and not the school, with the Agreement being drafted up by Law and Governance (Legal Services).

This is to avoid schools permitting third parties to occupy premises on the school sites without notifying OCC's Estates Department. In the absence of notifying the Estates Department there can be legal complications if for any reason the third party is required to leave the site, it also allows transparency of terms to The Childcare Providers.

- b) A Rent Review clause has been added. This is to allow rental growth after a period of five years if necessary.
- c) Additional right to request from the provider the financial records of the organisation and a percentage of profit/surplus maybe requested in addition to the premises rent. This is to avoid commercial profit-making organisations taking advantage of the discounted rent offered by the County to support statutory obligations.
- d) The Provider and OCC (The School if receiving the rents) is responsible for paying their own professional fees in relation to the completion of the Agreement has been amended from. This is to further support the Provider who is supporting OCC's Statutory obligations regarding sufficiency of early years and childcare places. Should the school receive the rents they will contribute towards the professional fees as follows: £500 for a Ground Lease and £1,000 for a Premises Agreement.
- e) The charges applied has been simplified to £3 per sq ft (£32.29 per sq.m) on the area occupied by all Providers providing funded Early Education and Childcare places.
- f) Commercial organisations not providing formal Childcare Education e.g. sports clubs are to pay a rent negotiated individually; either based on school's individual hire policy for accommodation used out of school hours, or on a Market Rent. This again is to avoid commercial profit-making organisations taking advantage of the discounted rent offered by the County to support Statutory Obligations.
- g) A copy of the full amended scheme are attached at Annex 2.

KAREN LISTER

Head of Estates and Strategy

ALLYSON MILWARD

Head of Access to Learning

Contact Officers: Debbie Rouget, Sufficiency and Access Manager: Early Years and Childcare

Alex Watson: Estates Surveyor

September 2019

¹ <https://www.gov.uk/30-hours-free-childcare>

² <https://www.gov.uk/government/publications/wraparound-and-holiday-childcare-responding-to-requests>

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**CABINET MEMBER FOR CHILDREN, EDUCATION & FAMILIES
8 DECEMBER 2014**

**REVIEW OF RENT AND LEASE ARRANGEMENTS FOR EARLY YEARS AND
CHILDCARE PROVIDERS OPERATING ON SCHOOL OR COUNCIL SITES**

Report by Director for Children Education & Families

Executive Summary

1. The last review of rents and lease arrangements for early years providers, operating on school premises, was carried out and approved by the Council's Executive in 2003 – see appendix 1
2. Since 2003 there have been many significant developments and changes in national policy for both funded early education and the provision of childcare – *see appendix 2*
3. These include the introduction of statutory sufficiency duties for Local Authorities to secure sufficient provision and an expansion of childcare provided on school sites.
4. The current coalition government has a clear desire to see access to more childcare on school sites, providing an 8am to 6pm offer of integrated education and care for children. The Children and Families Act 2014 paves the way to implementing a range of proposals, including making it easier for schools to offer out of school care, either directly themselves or through 3rd parties.
5. These changes are against a current background of the availability and affordability of childcare being a significant concern of all the main political parties, local authorities, families, organisations concerned with the well-being of children and families, and many providers.
6. In light of the above there is a need for the Council to provide clear, consistent and transparent additional guidance to support both schools and providers.

The local authority's sufficiency duties

7. The Childcare Act 2006 requires the local authorities to:-
 - Secure sufficient childcare for working parents or parents in education/ training - Section 6

This means securing the right type and volume of provision, so far as is reasonably practicable, for working parents, or parents who are studying or training for employment, for children aged 0-14 (up to 18 for a disabled child).
 - Secure early years provision free of charge (Nursery Education Funding) - Section 7

This means securing provision, so that families can access their free early education entitlement of 570 hours, over a minimum of 38 weeks per year, for **some 2 year old** (approximately 2,000 in Oxfordshire) and **all 3 and 4 year old** children.

8. Delivery and funding of the sufficiency duties:-

- Both early years and childcare places are delivered by a mixed market of voluntary, private and independent providers, including childminders, along with schools and academies.
 - **Childcare places** are expected to be self-sustaining from parental fees. In some circumstances parents are able to obtain support with their fees. This includes help with some (maximum 70%) of the childcare through Working Tax Credits for lower income families (support tapers as household earnings increase).
 - **Early years entitlement** is free to parents at the point of delivery. Providers are funded through the Dedicated School Grant as Nursery Education Funding (NEF). An Early Years Single Funding Formula (EYSFF) is agreed, through the School's Forum, and sets the rates for NEF. EYSFF includes an element for premises costs
9. All voluntary, private, independent providers, including childminders and academy providers of NEF enter into a legal agreement with the Council for the delivery of the places. The agreement includes the quality standards required. Ofsted is the sole arbiter of quality.

DfE Guidance for Schools

10. Guidance is available in the "[Governors' Handbook - For governors in maintained schools, academies and free schools](#)"¹

- The latest version was published by the DfE in September 2014 and relevant extracts are contained in *appendix 3*
- The guidance details the legislation that provides school governors with the powers to enter into premises agreements for use of school premises in order to accommodate extended activities and community services. It is also explained that charges can be made for the use of school premises and if the use is for "charitable purposes" (this includes childcare) then it is permitted to use the school delegated budget.

¹ www.gov.uk/government/publications/governors-handbook--3

11. The need for additional local guidance

- The DfE guidance does not advise on the premises charges to be made.
- In most cases schools and 3rd party early years and childcare providers are able to arrive at an agreement over the property charges.
- There are occasions when schools seek guidance on what to charge childcare providers and a few occasions where schools and providers have been unable to reach agreement on the premises charges to be made.
- In some instances uncertainty has arisen over the premises costs to be charged at renewal of leases, particularly where a Partnership Foundations Stage Unit (PFSU) agreement (*see appendix 2*) exists, as the council no longer has the resources to support these arrangements. This can create friction between schools and early years providers, following inconsistent advice being given and some proposals that affect sustainability of provision. This can result in considerable officer time being spent supporting negotiations.

- The Council's Legal Team recommends that there should be a signed lease or licence in place before a 3rd party organisation occupies the premises. This is considered essential to ensure that potential legal rights to occupy premises are not inadvertently created prior to, or without a formal agreement, being in place.
- In light of the above there is a need for the Council to provide clear, consistent and transparent additional guidance to support both schools and providers. This will also help support delivery of statutory sufficiency duties, along with the access to and affordability of provision for parents. The Council can only make recommendations to academies and church schools, as they have ownership/control of the premises, but it is recommended that the current policy is updated for community schools and that the same policy is implemented should council buildings be used to deliver these services.

Considerations

12. There are many considerations to be taken into account, including:-
- the local authorities' statutory duties to secure sufficient provision
 - supporting the Council's development work, to ensure sufficiency of childcare places. This includes working with schools to encourage provision on school sites. This is in response to government initiatives and also that often the best place for provision is the school site, where the children attend for their statutory school place, as it facilitates integrated care and education,.
 - ensuring accessibility to and affordability of provision for families
 - The considerations are set out in more detail in *appendix 4*

Key changes proposed from 2003 decision

13. On Legal Team's advice
- a. guidance on having a signed lease or licence in place before a 3rd party organisation occupies the premises has been included
 - b. in the case of community schools, where the council is usually the land owner, there is a recommendation that it is a requirement that the Council is the party that grants the lease or licence (this confirms current usual practice)
14. The link between Partnership Foundation Stage Units (PFSU) partnership agreements and preferential property arrangements is removed. This is because the Council no longer has the resources to support PFSU arrangements.
15. There is consistent property charging terms for all providers of funded early education. This was a recommendation from the Early Years Working Group (a sub group of the Schools Forum). It reflects that all these providers contribute to the Council's statutory duty, are funded at the same rate, operate in the same market and have similar operating costs.

The introduction of new arrangements for out of school provision.

16. This reflects that there has been an expansion of out of school care on school sites, the government's desire to see further expansion, the Council now having a duty to ensure sufficient childcare provision and that the cost of childcare being a significant concern. The proposal recommends that 3rd party providers have the same arrangements that become the practice for schools when they are directly providing

these services. It reflects that most providers operate as social enterprises and/or work on fine margins. However when large (80 to 100 place) holiday playschemes operate, typically just for part of the summer holidays, then there is a clear commercial venture, it is proposed that a commercial rent remains.

17. The introduction of the same arrangements should Council premises be used to deliver these services

Financial and Staff Implications

18. The recommendations potentially reduce the income that could be derived from renting school/council premises. However it is considered appropriate to discount a market rent in order to assist with fulfilling statutory obligations by offering affordable rents.
19. Costs for the Council's legal and agents fees in relation to the completion of the lease/licence will be recovered.
20. There are no other staff implications as the services are managed by and delivered by employees of the organisation occupies the premises.

RECOMMENDATIONS (see appendix 5 for detailed rationale)

The Cabinet Member for Children, Education & Families is RECOMMENDED to:-

- (a) **confirm support for the principle that school premises should be available for suitable community and extended services, particularly access to more childcare on school sites, providing an 8am to 6pm offer of integrated education and care for children;**
- (b) **implement the premises charges contained in Annexe 1 for arrangements being made between community schools and 3rd party early years and childcare providers, where the parties themselves cannot agree the charges, and when other council premises are used to deliver these services;**
- (c) **recommend the arrangements contained in Annex 1 to all other schools, including those operated by Diocesan authorities (voluntary controlled and voluntary aided schools) and academies in Oxfordshire.**

JIM LEIVERS

Director for Children Education & Families

Lead Author and CEF Contact Officer: David Mendham,

Sufficiency and Access Officer: Early Years and Childcare School Organisation & Planning

SUE SCANE

Director for Environment & Economy

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November 2014

**PREMISES ARRANGEMENTS for
EARLY YEARS and CHILDCARE PROVIDERS OPERATING on
SCHOOL or COUNCIL SITES**

The following premises arrangements are applicable for agreements between community schools and 3rd party early years and childcare providers. Schools may use the powers contained in the Education Act 2002 to agree alternative charging arrangements but in the absence of an agreement the charges below will apply. These arrangements are also applicable when other council premises are used to deliver early years and childcare services.

These arrangements are also recommended to all other schools, including those operated by Diocesan authorities (voluntary controlled and voluntary aided schools) and academies in Oxfordshire.

1. There must be a formal lease or licence in place, before the organisation occupies the premises.

A lease will be required where the organisation will have exclusive possession of the premises or may be required where the organisation has exclusive possession of the premises during designated hours. The lease will be contracted out of sections 24-28 Landlord & Tenant Act 1954.

A licence will be required where occupation of the premises is shared with the school.

2. In the case of community schools Oxfordshire County Council will be the party to grant a lease or licence, with agreement being drafted up by Law and Culture (Legal Services)
3. Organisations should meet their own running costs which includes gas, electricity, water, insurance, cleaning etc. This may be charged by the school as a percentage of actual costs incurred by the school apportioned based on floor area occupied by the organisation.
4. Organisations will be responsible for paying the Council's legal and agents fees in relation to the completion of the lease/ licence. The Council is to keep costs as low as possible by using template heads of terms and agreements wherever possible
5. Any rents payable will be paid into school budgets
6. Organisation pay rent on the following basis:-

A. Providers of Nursery Education Funding (NEF) places (including those also offering childcare places)	Rent	External Repairs	Internal Repairs	Running costs
<ul style="list-style-type: none"> Organisations located on school sites, providing its own building. e.g. prefabricated/ temporary buildings 	£500 per annum (ground rent)	Tenant	Tenant	Tenant usually by way of separate meters
<p>Note - Where the charges are to be implemented when leases are due to expire before end 2015, there will be a stepped increase from the current annual ground rent payable of £150 to £300 in years' one and two of the new lease until year three when the full rent of £500 per annum will become payable. For any new lease negotiations the full rent will be imposed with immediate effect.</p>				
<ul style="list-style-type: none"> Organisations using school/council buildings e.g. surplus school buildings/rooms 	£3.00 per sq.ft /£30 per sq.m per annum	Landlord/ Delegated schools budget*	Tenant	Tenant by way of apportioned costs or separate meter
<p>Note: the rent charge will be principally payable on the area of exclusive use.</p> <p>* It may be appropriate to include a clause requiring the tenant to make reasonable contributions to exterior repairs and maintenance costs for the area of exclusive use.</p> <p>Where other areas of the school property are intended to be shared e.g. ball pools, school halls, this will be negotiated separately and based on the hours of use of those shared areas and times of use</p>				
<ul style="list-style-type: none"> Day nurseries 	A rent, negotiated individually	As agreed between parties	As agreed between	As agreed between the

			the parties	parties
B. Providers solely providing breakfast clubs, after school clubs, holiday playschemes.	Rent	External Repairs	Internal Repairs	Running costs
<ul style="list-style-type: none"> Not for profit/low margin organisations – includes social enterprises and sole traders where the owner works in the provision 	Peppercorn	Landlord/ Delegated schools budget	Landlord / Delegated schools budget	Tenant by way of apportioned costs or separate meter
<ul style="list-style-type: none"> Commercial organisations 	A rent negotiated individually; either based on schools individual hire policy for accommodation used out of school hours, or based on £6.00 per sq.ft apportioned for hours of use.	Landlord/ Delegated schools budget	Landlord/ delegated schools budget	Tenant by way of apportioned costs charged by the school

In addition:-

I. For providers of Nursery Education Funding (NEF) places, including those also offering childcare places

- The landlord will have the right to terminate the lease/ licence in the event that the NEF is withdrawn by the Council, in accordance with the NEF agreement, with Ofsted being the sole arbiter of quality

II. For providers solely providing breakfast clubs, after school clubs, holiday playschemes.

- The lease/ licence contains a clause giving the right to terminate the agreement in the event of the provision being considered inadequate, either by reference to an Ofsted inspection or where there is no Ofsted registration, by the landlord at the landlords absolute discretion.

PREMISES ARRANGEMENTS FOR PROVIDERS SUPPORTING THE COUNTY COUNCIL'S STATUTORY OBLIGATIONS REGARDING SUFFICIENCY OF EARLY YEARS AND CHILDCARE PLACES OPERATING ON SCHOOL OR COUNCIL SITES

The following premises arrangements are applicable for agreements between Oxfordshire County Council (OCC) maintained schools and third party early years and childcare providers (Providers) operating on school sites and other OCC premises deemed appropriate to deliver early years and childcare services. All requests from early years and childcare providers to be considered on a case by case basis by CEF and Estates officers, particularly in respect of non-school sites.

The terms of the Lease/Licence (Agreements) must be negotiated by OCC's Estates Department. As Property owner, OCC will be named on the premises Agreement and not the school, with the Agreement being drafted up by OCC Law and Governance (Legal Services).

1. There must be a formal Agreement in place, before the organisation occupies the premises.
2. A lease will be required where the organisation will have exclusive possession of the premises whether on a full-time basis or during designated hours. The lease will be contracted out of sections 24-28 Landlord & Tenant Act 1954.
3. A licence will be required where occupation of the premises is shared with the school or other occupier.
4. A rent or licence fee will be payable for the area occupied and/or used by The Provider.
5. The rent or licence fee will be liable for review as per the Agreement to the higher of the rent recommended by prevailing Cabinet Report Premises Arrangements for Early Years and Childcare Providers or Retail Price Index (RPI) increase. If so, requested by OCC the Provider will submit the financial records of the organisation and a percentage of profit/surplus maybe requested in addition to the premises annual rent.
6. Where the premises are a standalone building, the Provider is responsible for the all internal and external repairs and maintenance including maintenance and upkeep of external open areas such as gardens, playgrounds etc.
7. Where the premises form part of a larger building the Provider will be responsible for all the internal repairs and maintenance of areas that exclusively serve the premises.
8. The Provider is to make a reasonable contribution towards external repairs and maintenance costs for any areas shared with other occupiers and towards any services that the premises benefits from which the Provider does not arrange direct delivery to the premises.
9. The Provider will be required to meet the outgoings connected with the premises to include utilities, rates, telecommunication costs, building insurance and cleaning costs etc. Where shared the outgoings will be charged to the Provider as a percentage of actual costs incurred apportioned based on floor area and pro rata for hours & times of use. The Provider will need to have its own public liability insurance with a limit per claim acceptable to OCC.
10. The Provider will be responsible for all statutory compliance and good practice for the use of the premises. Where there are shared compliance duties, the pro rata cost will be charged to the Provider as a percentage of actual costs incurred apportioned based on floor area occupied by the Provider and pro rata for hours & times in occupation
11. Whether located as a stand-alone or on a school site, The Provider will comply with the Oxfordshire Safeguarding Children's Board <https://www.oscb.org.uk> policies and procedures.
12. Premises Agreements can be terminated early in the following circumstances:
 - a) by The Provider on 6 months prior written notice should the Provider have to close for whatever reason;

b) by OCC on 12 months prior written notice should the Premises be required by the OCC for education purposes or by OCC for any other statutory function.

13. The premises Agreement may also be terminated as soon as is practicable should there be a breach of the Early Education Funding Terms and Conditions¹ (or as subsequently changed or amended by legislation) or if Ofsted suspends registration of the Provider or judges the provision to be inadequate.

14. The Provider and OCC will be responsible for paying their own professional fees in relation to the completion of the Agreement².

15. If the premises are located on a maintained school site, any rents payable will be paid into the school budget. This will be subject to review on Academy conversion

16. With regard to the above the following charges will apply:

A. Providers of Early Education Funding (EEF) places	Rent (per annum)	External Repairs	Internal Repairs	Running costs
Located on school sites, providing its own building.	£500 per annum (ground rent) subject to RPI increases at review.	Tenant	Tenant	Tenant usually by way of separate meters or apportioned costs in the absence of a meter.
In OCC Premises including school sites.	Equivalent of £3.00 per sq ft (£32.29 per sq.m) on area of occupied.	Landlord responsible but recharges Tenant	Tenant	Tenant by way of apportioned costs or separate meter
B. Other	Rent	External Repairs	Internal Repairs	Running costs
Providers solely providing breakfast clubs, after school clubs and not for profit holiday playschemes. All must be located on school sites.	Peppercorn	Landlord/ Delegated schools budget	Landlord / Delegated schools budget	Tenant by way of apportioned costs or separate meter
Commercial organisations (Not providing formal Childcare Education) e.g. profit making holiday Clubs, sports clubs, wrap around care on non-school sites	A rent negotiated individually; either based on school's individual hire policy for accommodation used out of school hours, or on a market rent.	Landlord/ Delegated schools budget	Landlord/ Delegated schools budget	Tenant by way of apportioned costs charged by the school

17. Where other areas of the school property are intended or are agreed to be available for use by the Provider e.g. swimming pools, school halls, this will be negotiated and charged separately based on the hours of use and times of use.

¹ [Early Education Funding Terms and Conditions](#)

² If the school receives the rent they will be expected to pay a contribution towards fees:
Ground Lease £500
Premises Lease £1,000

18. Where new accommodation is provided through a combination of funding sources, including some match funding from the provider, special arrangements may be made.

In addition:-

I. For providers of Early Education Funding (EEF) places, including those also offering childcare places

- The landlord will have the right to terminate the Agreement in the event that the EEF is withdrawn by the Council, in accordance with the [Early Education Funding Terms and Conditions](#) or subsequent legislation.

II. For providers solely providing breakfast clubs, after school clubs, holiday playschemes.

- The lease/ licence contains a clause giving the right to terminate the agreement in the event of the provision being considered inadequate, either by reference to an Ofsted inspection or where there is no Ofsted registration, by the landlord at the landlord's absolute discretion.

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