

Outline guidance where HCC Schools are considering to directly deliver preschool/nursery age, at lower age range of the school or considering a merger with an onsite pre-school – updated June 2020

Where a Hampshire County Council (HCC) maintained school is considering merging with or taking over early years provision, which is operating on the school's site, careful consideration needs to be given to a number of different issues. The school needs to exercise detailed due diligence to ensure the proposed venture is correctly structured.

This document is to be used for outline guidance only. The school's governors, head teacher and management team will need to conduct detailed consultation and discussion with several HCC departments to ensure the correct advice and guidance is given. These include:

- Governor Services
- Strategic Development
- Education Personnel Services
- Education Finance Services
- Property Services
- Services for Young Children (SfYC)

There are in effect three main options:

Option 1

Leave the setting as it is as a registered charity, separate from the school but working very closely with it. To assist in managing the setting at operational level you would effectively need to have someone who is a liaison link between the school and pre-school which covers day to day operational and management issues. This liaison could be formalised in a memorandum of understanding between the school and pre-school if preferred.

Pre-school staff would remain employees of the pre-school charity.

If the school performs some of the admin functions in terms of invoicing and cash collection for the pre-school, the agreement should be incorporated into the memorandum of understanding between the school and pre-school referred to above. This could extend to Year R support and performance management of the pre-school staff if required. However, clarity would be needed as to what support is provided and at what cost, and how this is charged to the pre-school. Otherwise staff who are paid to work at the school, doing work for the pre-school would in effect be subsidising the pre-school. The Governing Body need to ensure that funds delegated to it are used only for the education of children on the school roll.

The registered charity would not form part of Hampshire County Council's VAT registration. Any input VAT would be unrecoverable, and the school would not be able to purchase items on behalf of the pre-school. Where the school provides supplies of services such as cash collection this would be chargeable to the pre-school at standard rated services.

Finally, under this option do consider the legal entity status of the group. At present if it is run as an unincorporated voluntary committee the trustees are personally liable for any potential debts and liabilities of the group. Do look at becoming a Charitable Incorporated Organisation (CIO), or Company Limited by Guarantee (CLG), which will remove the personal liability, (except in the case of gross negligence). We would always recommend that the trustees take independent legal advice on this.

It is inadvisable for trustees of the charity to serve on the governing body due to potential conflicts of interest. If a charity got into difficulty and ultimately failed a trustee may find they are ineligible to serve as a governor under the disqualification regulations.

Option 2

Under section 27 community powers, you can run the setting directly under the control of the governing body.

With this option the school would effectively TUPE the pre-school staff to the school's employment, and you would need to take advice from Education Personnel Services on this process.

Staffing ratio requirements are detailed within the EYFS Section 3, and Ofsted registration requirements are contained within the Ofsted guidance revised in Feb 2017. The link is below:

<https://www.gov.uk/government/publications/factsheet-childcare-registering-school-based-provision>

The governing body effectively becomes the registered provider. Therefore, consideration should be given as to how to integrate the over-sight of the quality of provision and financial management of the provision into the work of the governing body. This may be through a dedicated committee or through the existing structures used to monitor and hold leaders to account for educational outcomes and financial management in the school. The governing body would want to use its skills audit to ensure the governing body had governors with knowledge of early years provision or undertake training to ensure they could acquire it to provide the strategic lead, financial over-sight and accountability for outcomes. Schools should amend their Edubase record to indicate that there is nursery provision at their school. Schools should follow the School Organisation Guidance if they need to lower their age range.

Additional guidance is available about the lettings or hiring out your facilities from the [Education Financial Services](#) website.

Option 3

Lower your age range and register the children as pupils.

Section 3.37 of the Early Years Foundation Stage applies as far as staff ratios is concerned. 'At least one member of staff must be a schoolteacher as defined by section 122 of the Education Act 2002, and at least one member of staff must hold a full and relevant L3 qualification'.

The pre-school staff would need to TUPE across to the school, as in option 2.

You would need to amend your Edubase record.

There are statutory and non-statutory processes to be followed depending on the School status. The process to follow is detailed in the DfE guidance on Making significant changes ('prescribed alterations') to maintained schools dated October 2018 to which a link is given below

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756572/Maintained_schools_prescribed_alterations_guidance.pdf

It should be noted that if a statutory process is required approval will be required from HCC senior officers and elected members and a consultation will need to take place. This will take time and it is essential that early discussion with the Strategic Development Team in Children's Services are undertaken. At a minimum two terms should be allowed for from start to finish of the statutory process.

Important Considerations for Options 2 or 3

Budgets and Business Case

It is not permitted to allow the school to subsidise any section 27 activity so the governors need to be confident that under options 2 and 3 the budgets look robust and are sustainable for both the school and pre-school in the longer term. Staffing costs are a major component of the cost of running the setting so do ensure the calculations and ratios are correct. Do have regard to the fact that staff will be employed on HCC terms and conditions with the associated HCC on-costs.

Under both options 2 and 3 the school will not receive rent from the pre-school so the impact of this on the school budget needs to be examined.

A simple template to aid with budgeting together with instructions in its use is available on the SfYC website.

<https://documents.hants.gov.uk/childrensservices/CashflowtemplateInstructions.pdf>

<http://documents.hants.gov.uk/childrensservices/CashflowtemplateBudgetandActual.xlsm>

Business Rates

Under the current school funding framework, mainstream primary and secondary schools receive funding through their budget share to cover the actual cost of their business rates. This would not be extended to cover any business rates due for any nursery provision.

Funding will only cover the element of business rates which applies to the school aged education provision and will therefore exclude any nursery provision.

Business Model

Consider the childcare needs of your parents – ‘customers’ – and whether there are business opportunities (or threats), in terms of your market offer. A specimen questionnaire is appended below, Appendix A – please feel free to change and adapt it to your needs.

You may need to think about extending hours, wrap around care, holiday provision, and providing a ‘stretched offer’ in terms of early years education (EYE) funding. Do also consider the Government’s 30-hour childcare scheme and how the setting can work to provide this, most likely in partnership with other providers. SfYC will provide more guidance on this as the initiative develops.

Also consider how you can exploit your brand, and how a joint provision can be promoted in an ever-evolving market.

Premises

If the early years setting is a tenant under an HCC lease arrangement, then this lease will need to be formally ended. The pre-school will need to have regard to any provisions within the lease regarding termination, dilapidations, or other finance liability if applicable. Advice should be sought from HCC Property Services who will be able to provide appropriate guidance.

The school will need to allow for any increase in business rates liability which may arise when an area of space formerly occupied by another entity comes under the footprint of the school’s use. Allowance for this will need to be made within the budget for the school, or pre-school cost code. See sections ‘Budgets and Business Rates’.

The maintenance liability for the area formerly demised to the pre-school entity will now become the school’s responsibility. The school will need to consider

adjusting its maintenance SLA with HCC and allowing for this in their budget or pre-school cost code.

Please bear in mind that any work carried out by HCC Property or Legal Services will be chargeable to the school or pre-school and agreement as to who pays these charges will need to be reached between the parties.

Property Services will need to assess the suitability of any building that will become part of the school's estate e.g. modular buildings. If "temporary" accommodation is involved discussion with Property and Children's Services Strategic Planning should be held early in the process so responsibilities for maintenance and possible replacement are established and agreed.

Pre-School assets

If you adopt option 2 or 3 the assets of the pre-school cannot just be handed to the school. The charity will need to be properly wound up and any assets transferred to a like-minded charity such as the parent teacher association or friends. These latter groups may need to have their constitution altered so that they can serve the interest of younger aged children. Such a transfer will need to be handled as set out in the pre-school's constitution and the permission of the Early Year Alliance (formally Pre-school Learning Alliance) and the Charity Commission may be required.

The school needs to identify what records need to be kept and what data is needed and establish systems and processes to achieve this.

Summary

The above cover the basic choices and main considerations but it is not exhaustive – much depends on how you want to proceed.

Your local SfYC Childcare Development and Business Officer will be happy to discuss further if needed, but any detailed work or analysis required on our part may have to be purchased through Hampshire Early Years Training and Consultancy portfolio of services. Please view the link below:

<https://www.hants.gov.uk/socialcareandhealth/childrenandfamilies/childcare/heytc>

This guidance note was prepared in liaison with: Governor Services; Schools Funding Team and Strategic Development.

Services for Young Children Childcare Development Team
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Appendix A Specimen Questionnaire

Future Early Years Education Childcare provision for families in xxxxxx areas

We are aware that there may have been a growing difficulty in the area for families to be able to access provision to meet all their childcare needs. In order for us to be responsive to market changes it is helpful to us to understand the current and future demand. Please complete the questionnaire and return it to the place from which it was acquired or to: (insert details)

Thank you.

<p>1. a) Do you currently have a child/children attending a childcare setting in the specified area?</p> <p>b) Do you currently have a child/children attending a childcare setting in another area?</p> <p>Name or location of childcare setting _____</p>	<p>Yes/No</p> <p>Yes/No</p>
<p>2. Which local childcare provision do you use?</p> <ul style="list-style-type: none"> • Day nursery • Pre-school • Registered childminder • Nanny/ au-pair • Before or After School Club • Holiday Playscheme • Other (<i>please specify</i>) _____ 	<p><input type="checkbox"/></p>
<p>3. What influenced your decision to use your current childcare?</p> <ul style="list-style-type: none"> • Location near home • Location near work • Location near family • Available spaces • Cost • Other (<i>please specify</i>) _____ 	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

4. If you have a current or future need for pre-school provision would you access the current providers?	Yes/No If no go to Q 5
5. If not, where would you want additional pre-school to be located? Any other local venue (<i>please specify</i>) _____	<i>Tick your preference</i> <input type="checkbox"/> <input type="checkbox"/>
6. Are you likely to require your full 15 hours free education or are you likely to require more or less hours?	Full 15 hours <input type="checkbox"/> More <input type="checkbox"/> Less <input type="checkbox"/>
7. If you are likely to require less hours how many hours do you think you will require?	
8. If you are likely to require more than 15 hours please tick your preferences	All year round <input type="checkbox"/> Term time only <input type="checkbox"/> 8am – 6pm <input type="checkbox"/> 9am – 3pm <input type="checkbox"/> 9am to noon <input type="checkbox"/> Other times: (<i>please specify</i>)
9. What are the dates of birth of your children that may need a pre-school place?	1 _____ 2 _____ 3 _____
10. What is your interest in the pre-school needs of the area if you do not have children aged under 5 years?	
11. Any other comments?	

12. If you are happy to do so, please provide your name and address	
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