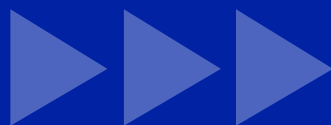


# Routeway to Childcare Development in Schools



A Guide for  
Governors and Schools



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# 1. Introduction



The Government's 10 Year Strategy for Childcare aims to ensure the best possible start in life for every child and reduce child poverty by improving opportunities for parents to take up work and training. In order to do this they have a commitment to create sufficient good quality, affordable, sustainable childcare, which meets the needs of parents and carers. The strategy is implemented in each local authority by bringing together key players involved with children and their families.

The Childcare Act 2006, which came into force at the end of 2006, encapsulates the key commitments from the 10 Year Strategy for Childcare into legislation.

## The Childcare Act 2006

*"A local authority must secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area who require childcare in order to enable them to take up, or remain in, work, or to undertake education or training which could reasonably be expected to assist them to obtain work."*

For further information please go to the every child matters website at [www.everychildmatters/earlyyears/childcareact](http://www.everychildmatters/earlyyears/childcareact)

Under the Childcare Act 2006 local authorities have a duty to guarantee sufficient childcare which meets the needs of working parents making the transition to work. Childcare sufficiency assessments give local authorities the chance to work with local partners, filling gaps in the market and shaping childcare services in their area. The ultimate aim is to provide the best possible childcare market for local families.

Good quality childcare is one of the core services that the Government wants all schools to offer access to by 2010 under the Extended Schools Agenda.

Generally, childcare on school sites is provided by voluntary, private or maintained sector childcare businesses working in partnership with schools. This arrangement has proved successful in allowing each partner to concentrate on their 'core business', whilst sharing a common interest in the development of childcare provision occupying school premises. The Government expects such developments to continue, particularly through the development of Extended Schools.

This document sets out an overview of the requirements and guidelines for governing bodies of maintained schools wishing to provide childcare services from the school site for the community. Governing bodies and schools will need to take advice from Gateshead Council if they are considering running childcare.

This document should be considered as a good practice guide for all schools in Gateshead. Non-maintained schools should be aware that some of the financial implications set out in this document may only be applicable to maintained schools in which case non-maintained schools should refer to their own governance regulations.

## 2. Legislative Framework



The Education Act 2002 has given governing bodies of maintained schools the powers to run community focussed facilities, including childcare. The power enables governing bodies to incur expenditure, enter into arrangements or agreements with any person, co-operate with, or facilitate or co-ordinate the activities of any person, and provide staff, goods, services and accommodation to any person.

When exercising these powers, governing bodies are required to have regard to advice as given from time to time by the DCSF and that given by the local authority. Governing bodies must also have regard to Gateshead Council's Financial Regulations for Schools and their primary responsibility to deliver education.

The Childcare Act 2006, requires local authorities to take the strategic lead in their local childcare market. Local authorities must work with private, voluntary and independent sector providers, planning, supporting and commissioning childcare to ensure there is sufficient local childcare for working parents. The Childcare Act 2006 imposes a duty on local authorities to regularly assess whether there is sufficient childcare in the area.

Section 11 of the Act requires local authorities to prepare an assessment at intervals not exceeding three years but also keep it under review until it is superseded by a later one. Local authorities are advised to consider updating the assessment whenever new data becomes available, and should do so to the extent possible at least annually. Local authorities also have a duty to consult with governing bodies when preparing and reviewing the assessment. Governing bodies and schools who wish to set up a childcare provision will therefore need to work in partnership with their local authority.

## 3. What is Childcare?



The Childcare Act 2006 defines childcare as any form of care for a child, including education or any other supervised activity. It does **not** include education (or other supervised activity) provided by a school during school hours for a registered pupil.

Childminding, full day care (usually provided in nurseries), sessional care (usually provided by pre-schools) and out of school clubs all fall within the definition of childcare. The most common type of childcare provided on school sites is out of school clubs which covers breakfast, after school and holiday clubs.

### Ofsted and Registration

All schools will be familiar with Ofsted who are responsible for the regulation of education. In 2001 Ofsted also assumed responsibility for regulating childcare standards, taking over from local social services departments.

Generally, all childcare providers caring for children under 8 years old must register with Ofsted, unless they fall into one of the legal exemptions listed on the Ofsted website.

Ofsted registers childcare providers on two registers:

- The Early Years Register
- The Childcare Register

All childcarers providing for children from birth to the 31 August following their fifth birthday (known as the early years age group) must register with Ofsted on the **Early Years Register** and deliver the Early Years Foundation Stage ("EYFS").

Maintained and independent schools that are directly responsible for provision for children aged from birth to the age of three, where at least one child is a pupil of a school; or who provide childcare for children in the early years age group, where no child is a pupil of the school, must also register with Ofsted.

The Childcare Register has two parts: a compulsory part and a voluntary part.

A childcare provider must register on the compulsory part of the Childcare Register if they care for children from the 1 September following their fifth birthday up to the age of eight, unless they are not required to register. This is usually six and seven year olds, but could include some five year olds.

The voluntary part is for childcare providers who are providing care that does not need to be registered with Ofsted but who wish to register with Ofsted. This would include for example, short term care such as crèches or care for children aged 8 years and above.

Schools looking to provide childcare will need to consider whether the childcare will need to be registered with Ofsted.

#### **Ofsted:**

**Tel: 08456 40 40 40**

**Website: [www.ofsted.gov.uk](http://www.ofsted.gov.uk)**

## 4. Guidelines for Setting up School-Led Childcare



These guidelines set out the issues to be considered and the steps to be taken by governing bodies and their schools when setting up childcare provision.

### 4.1. Establish Need

The first step to be taken is to establish whether there is a need for childcare within the community. A survey should be undertaken of local parents to assess the potential interest in the proposed childcare provision. There should also be consultation with other local providers (including other schools) to ensure that a new provision will not have a negative impact on existing services in the locality. Assistance with this can be obtained from the Council (Early Years and Childcare Services "EY&CS"), who can supply model questionnaires and provide information on existing and planned local provision.

Clearly, if there is no demand for the provision then no further steps should be taken.

If the survey results and consultation show that there is demand then consideration should be given to the type of service to be provided.

### 4.2. Location

Consider where the new provision will be located. Any area of the school to be used would need to be fit for purpose and meet Ofsted requirements. If there is no existing area, consider an alternative building. If you propose to use an existing area consult with the School Organisation and Development

Manager to review the school's existing accommodation. The EY&CS can advise on Early Years Foundation Stage for early years childcare and Ofsted regulation requirements for accommodation.

The Quality Childcare Officer will support you in identifying an alternative building and assessing its suitability.

### 4.3. Governance

Consider how the new provision is going to be governed and who is going to manage the running of the childcare, and, importantly, bear the business risk. There are a number of ways that the childcare provision can be delivered, all of which have different implications (advantages and disadvantages) for the governing body and the school. The four different options open to schools are:

1. The governing body works in partnership with a third party provider who provides the provision;
2. The governing body directly manages the provision;
3. A limited company is set up by the governing body to run the provision; or
4. The governing body works in partnership with a voluntary committee, who provides the provision.

Model 1 (working in partnership with a third party provider) is Gateshead Council's preferred option. The other options have significant drawbacks for schools and governing bodies, which are outlined in the following pages.

## Model 1 The governing body works in partnership with one or more third party providers

The childcare is provided and managed by another organisation under a contract or service level agreement with the governing body. This could be a private company, a voluntary or public sector provider or a local authority provider.

Schools may wish to develop existing relationships with third parties already providing services in the area. Those

providing the service would not need to be on the same employment terms as existing local authority employees.

The model allows the school the freedom to provide childcare without the drawbacks of having responsibility for the day-to-day management of the business, or the associated business risk.

Advantages:	Disadvantages:
The external provider would manage the business allowing the governing body and the head teacher to get on with managing the school;	The governing body would be giving up an element of control over the services provided, but would have a service level agreement to ensure that quality and efficiency is maintained.
There would be no requirement for the school to employ new staff or deal with the additional administration involved with providing childcare itself;	
The external provider would provide the necessary skills and knowledge relevant to the service(s) to be provided;	
The governing body could still retain an element of control over the service being provided via the service level agreement and ensure that the provision fits in with the cultural ethos of the school.	

## Model 2 Direct management by the governing body

The childcare provision is provided and managed directly by the school, and the governing body is directly accountable for all services provided. In practice the governing body is likely to delegate the responsibility for the delivery of the services to a sub-committee of the governing body.

Staff deployed in relation to providing the childcare would be employed by the local authority for maintained schools, and would need to be on the same terms and conditions as other local authority employees. **Schools cannot use the delegated budget to support childcare facilities, including paying staff wages so the childcare provision**

**would need to be self supporting and sustainable.**

If the governing body chooses to manage the services directly then it will need to comply with section 28 of the Education Act 2002 which imposes an obligation on a governing body providing community services to consult with the local authority regarding its proposals and have regard to the local authority's advice. The governing body will also be required to submit quarterly financial statements to the local authority (monthly for the first six months), setting out both actual and projected income and expenditure.

Advantages:	Disadvantages:
The governing body/head teacher would retain full control over the services provided;	Due to the additional risk that would be taken on by the local authority if the childcare service turned out to be unsustainable, it would be a requirement that the governing body produce, at the outset, a robust, minimum 3-year business plan for approval by the local authority. The business plan would need to detail an exit strategy if the service proved to be unsustainable which would need to take into account the costs of any redundancies that would be made;
	The local authority will charge for payroll, staffing and HR services; such costs could not be paid from the delegated budget;
The services would be run within the cultural ethos of the school;	The governing body would be responsible for the provision of the services and therefore accountable. It must ensure that the provision is properly controlled, supervised and risk assessed to fall under the local authority's insurance;

<b>Advantages:</b>	<b>Disadvantages:</b>
<p>Schools could retain the profit, if any, derived from the service provided, which must be reinvested in the school or the service.</p>	<p>The governing body would be liable for any deficit arising from the provision of services. Any deficit would need to be met by funding from sources other than the school's delegated budget;</p>
	<p>The governing body would retain control over the finances/ and administration of the services. The school may need to employ additional staff to deal with this extra work. If existing staff are used then those staff would need separate contracts of employment for the additional duties undertaken. Again additional costs would need to come from sources other than the school's budget share;</p>
	<p>The governing body/head teacher may not have the relevant experience in providing the services required;</p>
	<p>The governing body/head teacher would need to dedicate additional time to overseeing the running of these services (any time spent by the head teacher should be out of school hours).</p>

## Model 3 The governing body sets up a limited company

Services are provided by a limited company set up by the school or a cluster of schools. The governors and/or the head teacher may be directors of the company.

Advantages:	Disadvantages:
<p>The governors/head teacher, as directors, would retain full control over the company and the services provided;</p>	<p>The company would be a completely independent entity from the local authority and should be run as such. The company would need a full suite of policies and procedures dealing with health and safety, employment, pensions etc.</p> <p>The provision would not be covered by the local authority's insurance and the directors would need to ensure that sufficient insurance is in place.</p> <p>The directors would need to be aware of any tax implications arising when running a business via a limited company;</p>
<p>The company would be able to hire, and set conditions for its own employees;</p>	<p>The directors would need to be aware of relevant employment legislation and obligations when taking on employees. Staff would need contracts of employment. The company would be responsible for ensuring staff undergo CRB checks, and for keeping of a central record of recruitment checks on staff.</p> <p>All staff and running costs would need to be met from other sources and could not come out of the the school's budget share. Staff could not be interchangeable between the school and the company.</p> <p>The directors would be responsible for ensuring employees' tax and NI contributions were paid to the Inland Revenue direct as this would not be dealt with by the local authority;</p>
<p>Limited liability - in most circumstances, if the company becomes financially unviable, the directors would not be personally liable.</p>	<p>Running a limited company would be time consuming for the head teacher/governors who are directors (and any work done by the head teacher or other staff should be out of school hours);</p> <p>Conflicts of interest are likely to arise for the head teacher and any governors who are directors between their duty to act in the best interests of the school and their duty to act in the best interests of the company as the two may not always be compatible;</p>
	<p>The directors may not have the relevant experience in providing some of the services;</p>

<b>Advantages:</b>	<b>Disadvantages:</b>
	<p>The directors would need to ensure that the company complied with its obligations under the Companies Act 1985. These include a duty to:</p> <ol style="list-style-type: none"> <li>1. Register with Companies House ("CH");</li> <li>2. File its memorandum and articles of association with CH;</li> <li>3. File annual accounts with CH;</li> <li>4. File annual returns with CH;</li> <li>5. Display the name of the company outside its place of business;</li> <li>6. Display the name of the company, its registered office and address and company number on all correspondence;</li> <li>7. Keep a register of members that is open for inspection by the public;</li> <li>8. Hold annual general meetings;</li> <li>9. Hold extraordinary general meetings in certain circumstances;</li> <li>10. Register charges;</li> </ol>
	<p>If the company does not comply with the requirement to file annual accounts, then the company will automatically be liable to pay a fine.</p> <p>In addition, it is a criminal offence for directors to fail to submit annual returns and/or accounts for which they can be prosecuted and fined up to £5,000 for each offence;</p>
	<p>The company would need to have articles of association which set out the way that the company is run;</p>
	<p>If the company is deemed to be a 'school company' within the meaning of the Education Act 2002 and School Companies Regulations 2002 then the company would need to comply with various requirements set out in the Regulations. This would include the local authority being able to exercise limited control over the company;</p>
	<p>The company may need to prepare fully audited accounts each year which would mean additional costs for the company;</p>
	<p>There are circumstances where directors could incur personal liability for the debts of the company or even be disqualified from acting as a director in the future, which they would need to be aware of before taking on the position.</p>

## Model 4 The governing body works in partnership with a voluntary committee

Services are provided and managed by a voluntary committee. This should be an independent entity, separate from the governing body.

Advantages:	Disadvantages:
<p>Allows greater community involvement than the other models;</p>	<p>The service provided would be a completely independent entity from the local authority and should be run as such.</p> <p>The voluntary committee would need a full suite of policies and procedures dealing with health and safety, employment, pensions etc.</p> <p>The voluntary committee members would need to be aware of relevant employment legislation and obligations when taking on employees, and ensure that sufficient insurance is in place.</p> <p>They would also need to be aware of any tax implications arising when running a business;</p>
<p>The voluntary committee would bear the business risk;</p>	<p>The voluntary committee would be responsible for the provision of the services and therefore accountable. The school would need to ensure that the voluntary committee has sufficient insurance in place to cover this, and provides an appropriate indemnity to the school. A voluntary committee may not be able to provide this. The voluntary committee may not have the relevant experience or qualifications to provide the services required;</p>
	<p>All staff and running costs would need to be met from other sources and could not come out of the the school's delegated budget;</p>

Advantages:	Disadvantages:
	<p>The voluntary committee would be responsible for employing staff; Staff could not be interchangeable between the school and the service provision.</p> <p>The voluntary committee members would be responsible for ensuring employees' tax and NI contributions were paid to the Inland Revenue direct as this would not be dealt with by the local authority.</p> <p>The voluntary committee would be responsible for criminal record bureau checking all staff. Volunteers may not be willing to take on this burden of responsibility;</p>
	<p>It is dependent on volunteers having the time to make the necessary commitment;</p>
	<p>The voluntary committee may not have the relevant experience or qualifications to provide the service required;</p>
	<p>The voluntary committee may not be perceived as having a separate identity from the school, making the school 'accountable' in users eyes;</p>
	<p>The school would be giving up an element of control over the services provided, and would need a service level agreement to ensure that quality and efficiency is maintained.</p>

## Governance - Summary

Model 1 (working in partnership with a third party provider) is Gateshead Council's preferred option. This allows the school the freedom to provide childcare without the drawbacks of having responsibility for the day-to-day management of the business, or the associated business risk.

Given the business risks that would come with model 2 the local authority would need to exercise considerable control over the provision to ensure sustainability.

Models 3 and 4 both have disadvantages that outweigh the advantages and are therefore not recommended as viable options.

For model 3, the head teacher and governors, as directors would take on all the obligations that are associated with running a business.

In addition the regulatory requirements setting up and running a company are onerous.

The potential problems relating to lack of expertise, dependency on volunteers and accountability issues make the running of childcare via a voluntary committee (model 4) also an unattractive option.

## 4.4. Setting up the Childcare Provision

The steps required to set up the childcare provision are dependent upon which delivery model is chosen. Whichever model is chosen the school would need to work with the Council's legal team to ensure that an appropriate service level agreement is in place between the school and the provider (even if the provider is the governing body).

It is important that close contact is maintained between the school and the Council throughout the provision of the

service so that any issues that arise can be resolved with least risk to the parties. This is particularly relevant when the school is considering a change of service provider when issues under the Transfer of Undertakings (Protection of Employment) Regulations 2006 may arise. (See Section 6 for further information).

A list of Council officer contacts who can support you through the process can be found at Appendix B.

## Model 1

If the school decides to go into partnership with a third party provider then the following steps should be taken:

	Action	Support Available	Cost to School
1	The governing body should consult with the local authority, staff and parents about the proposal for the school to enter into a contract for the provision of childcare.	This is a requirement under section 27 of the Education Act 2002. Governing bodies are also required to have regard to any advice given by the local authority.	
2	Establish whether there are providers in the area who would wish to set up a childcare provision on the school site.	The Quality Childcare Officer will be able to assist in making contact with suitable providers. If there is more than one possible provider the governing body should consider using a suitable selection process to ensure quality. The Childcare Development Officer can provide template procurement documentation and assist you with the selection process.	
3	Decide upon provider.	The governing body may wish to meet with prospective providers to see which will most closely match ethos of the school.	
4	Draw up service level agreement with third party provider. This may include a licence to occupy premises.	The Council's Legal Department can assist with drawing up an appropriate service level agreement.	
5	Request copies from provider of Ofsted registration, insurance certificates and confirmation that enhanced CRB checks have been carried out.	The Quality Childcare Officer and Business Support Officer at the Council can advise.	

## Model 2

If the school decides to provide its own childcare then the following steps should be taken:

	Action	Support Available	Cost to School
1	The governing body should consult with the local authority, staff and parents about the proposal for the school to set up childcare.	This is a legal requirement under section 27 of the Education Act 2002. Governing bodies are also required to have regard to any advice given by the local authority.	
2	If appropriate delegate the delivery of the childcare provision to a sub-committee of the governing body.	Governors would need to be specifically trained in the responsibilities around running childcare before this option can be taken.	Training costs.
3	Identify who would be the registered person (See Appendix A).	The registered person or registered body is the person or body with legal responsibility for operating the childcare provision and ensuring compliance with EYFS, welfare requirements and any conditions imposed by Ofsted.	Cost of registration: Early Years Register (0-5 year olds) £200  For sessional care under 4 hours (including before and after school care) £30.  Costs may change.
4	Seek advise from the Quality Childcare Officer about registration application timescales, and for copies of standards and guidance. (Ofsted cannot guarantee registration in less than 6 months).  Complete necessary application forms and inform the Quality Childcare Officer of the application.	Ofsted: Tel: 08456 40 40 40 Website: <a href="http://www.ofsted.gov.uk">www.ofsted.gov.uk</a>  Application forms are available on the Ofsted website.	

	<b>Action</b>	<b>Support Available</b>	<b>Cost to School</b>
5	Decide how the provision of childcare will fit into the school management structure and how financial risks will be managed. Arrangements for premises, security, insurance and monitoring quality will need to be addressed.	The Quality Childcare Officer and the Business Support Officer will advise on childcare provision, funding opportunities and requirements for setting up.	
6	Consider who will run the childcare. If it is to be the head teacher or a governor, consider whether there will be a conflict of interest. Seek advice from EY&CS.		
7	Draw up a Business Plan covering the first 3 years of operation. The plan must cover all aspects of operation including contingency plans and risk management. The Business Plan must be approved by the Financial Support Services Officer before further steps are taken.	The Business Support officer can provide assistance.	
8	Obtain assistance from the Council's Human Resources Department with contracts of employment for new and existing staff, who will deliver the service. There will be an additional buyback charge for this.	The Staffing Support Manager can provide support with this.	
9	Secure grant funding (if available).	The Quality Childcare Officer and Business Support Officer can assist with this.	
10	Ensure approved application forms have been submitted to Ofsted for registration.	Contact Quality Childcare Officer for assistance.	
11	Inform Financial Support Services Officer to enable the appropriate separate funding stream to be set up.	Your School's Budget Support Officer.	

	<b>Action</b>	<b>Support Available</b>	<b>Cost to School</b>
12	Using EYFS, draw up policies and procedures. These should be non-discriminatory and, wherever possible, in line with school policies. Include a complaints procedure.	The Quality Childcare Officer will offer advice on provision / policies.	
13	Recruit and appoint staff. (Manager should be qualified to at least NVQ level 3 in childcare and education and 50% of the rest of the staff should be qualified to NVQ level 2).	Human resources will assist with recruitment. The Quality Childcare Officer will assist with Ofsted requirements. All employees will need Criminal Record Bureau (CRB) checks and an Enhanced Disclosure.  New staff details should be added to the single central record.	Initial employment and salary costs.  Recruitment costs.  CRB Check costs
14	Draw up a plan to establish quality standards and monitoring arrangements.	EY&CS Quality Team will give support.	Resources and equipment costs.
15	Market the provision e.g. through the local parent and toddler groups, school health clinics / surgeries etc.  Agree and publish a charging policy.	The Communication & Information Manager will advise on all aspects of Marketing.  The Gateshead Families Information Service (FIS) market all childcare places in Gateshead. FIS Tel: (0191) 433 8515.	Marketing materials.
16	Ensure provision is in receipt of Ofsted registration certificate and appropriate insurance and fire safety certificate.		

## Model 3

If the governing body decides to set up a limited company then the following steps need to be taken.

	Action	Support Available	Cost to School
1	Decide which company structure to use (a company limited by shares or limited by guarantee)	Legal advice should be taken when considering setting up a limited company.	Cost will vary depending on advice taken.
2	Consider whether to form a community interest company (CIC) or a charity, or neither.		
3	The governing body should consult with the local authority, staff and parents about the proposal for the governing body to set up a company to provide childcare.	This is a legal requirement under section 27 of the Education Act 2002. Governing bodies are also required to have regard to any advice given by the local authority.	
4	Decide who is going to be appointed as the company's officers.  Governors and head teachers considering becoming a director of the company should consider whether this would pose a conflict of interest with their duty owed to the school.	A private company must have at least one director who must be a named individual (and not another company) over the age of 16.	
5	Consider whether training required for company officers.	All company officers have wide duties and responsibilities under company law and training should be undertaken by those who have not acted as company officers previously.	Cost will vary depending on level of training required.
6	Draft memorandum and articles of association or purchase an off-the-shelf company.	An off the shelf company (i.e. a company that has already been incorporated) can be purchased from formation agents. See Companies House website for further information: <b><a href="http://www.companieshouse.co.uk">www.companieshouse.co.uk</a></b>	Cost will vary

	<b>Action</b>	<b>Support Available</b>	<b>Cost to School</b>
7	Consider who are going to be members of the company. If it is to be a company limited by shares these are the shareholders, with a company limited by guarantee these are the guarantors.	The governing body, as a body corporate, could become a member.	
8	Take necessary steps to incorporate the company (if not purchasing an off-the-shelf company).	This will involve completion of a Form 10 and 12 and filing these, together with the memorandum and articles of association at Companies House. When forming a CIC additional documents are required. Further information can be found on the Companies House website <a href="http://www.companieshouse.co.uk">www.companieshouse.co.uk</a>	Standard registration fee (payable to Companies House) is £20. An additional fee of £15 is payable to the Regulator when forming a CIC.
9	If registering as a charity make a formal application to the Charities Commission for charitable status.	Further information can be obtained from the Charity Commissions website <a href="http://www.charity-commission.gov.uk">www.charity-commission.gov.uk</a>	
10	Identify who would be the registered person (See Appendix A).	The registered person or registered body is the person or body with legal responsibility for operating the childcare provision and ensuring compliance with EYFS, welfare requirements and any conditions imposed by Ofsted.	Cost of registration Early Years Register (0-5 years old) £200  For sessional care under 4 hours (including before and after school care) £30.  Costs may change.
11	Seek advice from the Quality Childcare Officer about registration application timescales, and for copies of standards and guidance. (Ofsted cannot guarantee registration in less than 6 months).  Complete necessary application forms and inform the Quality Childcare Officer of the application.	Ofsted: Tel: 08456 40 40 40 Website: <a href="http://www.ofsted.gov.uk">www.ofsted.gov.uk</a>  Application forms are available on the Ofsted website.	

	<b>Action</b>	<b>Support Available</b>	<b>Cost to School</b>
12	Decide how financial risks will be managed. Arrangements for premises, security, insurance and monitoring quality will need to be addressed.	The Quality Childcare Officer and the Business Support Officer will advise on childcare provision, funding opportunities and requirements for setting up.	
13	Draw up a Business Plan covering the first 3 years of operation. The plan should cover all aspects of operation including contingency plans and risk management.	The Business Support Officer can provide assistance.	
14	Consider employment issues.  The company should employ staff directly.  Consider setting up HR policy, pensions, CRB checks, a single central record etc.	Staff employed by the school cannot have their existing contracts extended to do work for the company.	
15	Secure grant funding (if available).	The Quality Childcare Officer and Business Support Officer can provide assistance.	
16	Ensure approved application forms have been submitted to Ofsted for registration.	Contact Quality Childcare Officer for assistance.	
17	Set up bank account for the company. All transactions will need to go through this and not the existing school account.  Ensure that the company has its own stationery, which is Companies Act compliant. School/local authority stationery should not be used.		

	<b>Action</b>	<b>Support Available</b>	<b>Cost to School</b>
18	Using EYFS, draw up policies and procedures. These should be non-discriminatory and, wherever possible, in line with school policies. Include a complaints procedure.	The Quality Childcare Officer will offer advice on provision / policies.	
19	Draw up a service level agreement between the school and the company. This may include a licence to occupy premises.	The Council's legal department will assist the school with drawing up an appropriate service level agreement.	
20	Recruit and appoint staff. (Manager should be qualified to at least NVQ level 3 in childcare and education or equivalent and 50% of the rest of the staff qualified to NVQ level 2).	The Quality Childcare Officer can advise on Ofsted requirements. All employees who work with children will need enhanced CRB checks.	
21	Draw up a plan to establish quality standards and monitoring arrangements.	EY&CS Quality Team will give support.	
22	Market the provision e.g. through the local parent and toddler groups, school health clinics / surgeries etc. Agree and publish a charging policy.	The Communication & Information Manager will advise on all aspects of Marketing.  The Gateshead Families Information Service (FIS) market all childcare places in Gateshead. FIS Tel: (0191) 433 8515	
23	Ensure provision is in receipt of Ofsted registration certificate and appropriate insurance and fire safety certificate.		

## Model 4

If the governing body decides to work in partnership with a voluntary committee then the following steps should be taken:

	Action	Support Available	Cost to School
1	<p>Establish whether there are individuals in the area who would wish to set up a childcare provision on the school site. This may include the local parents or childminders.</p> <p>Governors considering becoming a member of the committee should consider whether this would pose a conflict of interest with their duties as a governor.</p>	The Quality Childcare Officer can provide assistance.	
2	The governing body should consult with the local authority, staff and parents about the proposal for the school to enter into an arrangement with the voluntary committee to set up childcare.	This is a legal requirement under section 27 of the Education Act 2002. Governing bodies are also required to have regard to any advice given by the local authority.	
3	<p>Ensure that the voluntary committee is aware that they are acting independently from the school and will, for example, need to have their own employees, insurance etc.</p> <p>The voluntary committee may wish to consider incorporation to minimise the risk of individual members of the committee being exposed to liability.</p>		
4	Draw up service level agreement with the voluntary committee. This may include a licence to occupy premises.	The Council's Legal Department can assist the school with drawing up an appropriate service level agreement.	
5	Request copies from the voluntary committee of Ofsted registration, insurance certificates and confirmation that enhanced CRB checks have been carried out on employees.	The Quality Childcare Officer and Business Support Officer can advise.	

# 5. Running/Monitoring the Childcare Provision



The involvement required in the childcare provision once it is up and running is again dependent upon which model is used:

## Model 1

If the school is in partnership with a third party provider then the only role taken by the school is that of monitoring the provision for quality and sustainability. The licence/service level agreement between the governing body and the third party provider will include monitoring provisions.

## Models 2 and 3

If the governing body is managing the childcare directly, or setting up a limited company then the governing body should consider the following issues:

### QUALITY

For either model, the quality of the childcare provision must be regulated by Ofsted's Early Years Directorate to ensure that the EYFS and welfare requirements are met.

Ofsted will carry out spot inspections. The first inspection could be within 6 months of registration and no notice will be given.

To continue to be registered with Ofsted, providers must pay an annual fee. The annual fee for being registered on the Early Years Register is currently £200, and for the Childcare Register is £114. If you are registered on the Early Years Register you do not have to pay the additional fee for registration on the Childcare Register. For sessional childcare the annual fee is currently £30.

All school-run childcare provision must make a commitment to quality and the governing body should work towards, complete and maintain the Gateshead Quality Improvement Programme (QIP).

The governing body should ensure that there are effective training and professional development plans in place for childcare staff. EY&CS can provide a staff training programme, which is at minimum cost to all registered childcare providers.

If it is intended to go on the register to deliver childcare under the 3 and 4 year old Free Entitlement Funding, the Council's terms and conditions relating to Free Entitlement Funding should be referred to.

### FINANCE

All aspects of finance concerned with childcare provision must be kept separate from the rest of the school budget. In line with the scheme for local financial management of schools, the school budget cannot be used to subsidise any trading activities, including childcare. For model 2 the governing body should ensure that a separate funding stream (with a separate funding code) for the childcare facility is set up. For model 3, the company should ensure that a separate bank account for the childcare facility is maintained and that all transactions are carried out through this.

For model 2 the governing body will be required to submit quarterly financial statements to the local authority (monthly for the first six months), setting out both actual and projected income and expenditure. For model 3 annual accounts and returns will need to be prepared and filed with Companies House.

Parents should be charged for childcare (except for the free entitlement to provision for three and four year olds). The governing body/company will need to agree and publish a charging policy. Any profits accrued from childcare may be used for the benefit of the provision.

## **LIABILITY**

For model 2, the governing body should be aware that it may be liable for any losses the provision may make (and the governors may be personally liable if they do not act in good faith). For model 3, whilst the company has limited liability, the directors should be aware of their duties under company legislation to ensure that they do not become personally liable for any debts that arise.

## **SUSTAINABILITY**

The governing body/company should make a commitment to the continuity and the sustainability of the childcare provision. The provision should be regularly monitored against the business plan for financial sustainability. The Business Support Officer can give support with this. If the provision is not sustainable and has to close, parents should be given at least three months' notice.

If demand can be demonstrated the governing body/company can consider the possible expansion of the childcare provision, through development of additional childcare places. The Quality Childcare Officer and Business Support Officer will advise on the availability of grants, and look at the feasibility of expansion. Any costs will depend on the planned expansion and Ofsted will need to be notified of any staff/registration changes.

## **GOVERNANCE**

The governing body/company should ensure that the business plan is adhered to and updated when appropriate, and that contracts of employment and CRB checks are kept up to date. For model 3, the directors need to ensure that the company complies with its filing requirements under company legislation.

## **MONITORING**

For either model, the governing body/company should make a commitment to self-evaluation of childcare provision.

## **MANAGEMENT**

Day to day management of childcare provision should not fall to the head teacher of the school because a conflict of interest is likely to arise. A suitably qualified childcare manager should be appointed to undertake this task. Staff with play work qualifications are recommended for working in childcare services for children over 3 years old. For pre-school provision, providing care an NVQ level 3 qualification in childcare and education is an essential minimum qualification for the manager. For childcare providing early years education, and registered to do so with Gateshead Council, it is expected that the curriculum is planned by a qualified early years teacher or staff with Early Years Professional Status.

## **Model 4**

If the school is in partnership with a voluntary committee then it will be for the voluntary committee to take responsibility for all the issues associated with running the childcare provision and the head teacher and governors should be careful not to get involved. The only role that should be taken by the school is that of monitoring the provision for quality and sustainability. The service level agreement between the governing body and the voluntary committee will include monitoring provisions.

## 6. Other Issues for Consideration



### Legal Issues

- Section 27 of the Education Act 2002 ("the 2002 Act") gives schools the power to provide, or enter into contracts to provide, any facilities or service, which furthers charitable purposes for the benefit of pupils at the school, their families or the local community. The provision of childcare falls within this provision. This is in addition to schools' pre-existing powers to establish early education classes and to allow voluntary or private providers to run childcare facilities on school premises.
- Where the governing body decides to directly manage the provision of childcare under the 2002 Act, due to the early education element in the childcare provision, the governing body will have to publish proposals in accordance with the School Standards and Framework Act 1998. Children attending childcare provision are not pupils of the school for the purposes of the Education Acts and **the childcare provided cannot be funded through or subsidised by the school's delegated budget.**
- While governing bodies are responsible for the control and management of school premises, they do not own the school buildings and land and therefore cannot convey a legal interest in the premises to a third party. That is, they cannot lease any part of the property but they may licence another to use part of the premises (i.e. lettings) or enter into a transfer of control agreement to either share or delegate control and management of part of the premises for specified parts of the day.
- At maintained community and voluntary controlled schools, non-teaching staff appointed to provide a community service established by a governing body are employed by the local authority. The grade at which the person is appointed must be on a scale of grades applicable in relation to employment with the authority. In the case of voluntary aided schools, the governing body makes the appointment and is also the employer.
- Where governing bodies incur expenditure in the exercise of their powers under Section 27 of the 2002 Act, such expenditure is, as against third parties, to be treated as part of the local authority's expenditure incurred in maintaining the school. The purpose of the legislation is to provide cover by local authorities in cases where a third party has a claim arising from the provision of community services. The local authority may recover these costs from the governing body, but such costs cannot be recovered from the school's budget share.
- School governing bodies are themselves bodies corporate and as such individual governors generally will not have personal liability provided they act in good faith.

## Scheme for Financing Schools

- While the legislation clearly gives governing bodies the power to provide community facilities, either directly or by agreement with a third party, this is subject to the local authority's financial scheme for schools.
- The current scheme contains a limitation on the use of transfer of control agreements in respect of sports and youth and community activities. While there is no express limitation as regards childcare, advice should be sought on the implications, if any, for the school budget if entering into such an agreement.  
**Gateshead's scheme for financing schools requires any school considering using the powers under Section 27 to submit their proposals to the local authority which must include a detailed business plan and staffing arrangements.**
- All financial transactions in relation to the exercise of the community facility powers require an independent funding stream. Where any deficit arises from the provision of community facilities and the local authority has to recover funds to meet any third party liabilities, the local authority will seek to recover the deficit from the governing body although this cannot be met from the school's budget share.

## Employment Issues

- Where the childcare provision is managed directly by the governing body, staff will be employed by the local authority. In this scenario the governing body will need to satisfy itself and the local authority that the provision is sustainable over the longer term and be aware of the financial implications of redundancy should the provision not be sustainable.
- The governing body should be aware of the possible implications of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). Whether or not TUPE applies will depend on the facts in each case. However, where a school enters into an agreement with a third party to provide childcare, it should be aware that the provisions of TUPE may apply to staff employed by that third party provider. In other words if the agreement with the third party provider comes to an end and the school either decides to provide the services directly or to employ an alternative provider, staff employed by the original provider may well have acquired rights which under the regulations will transfer to the new provider.

# Appendix A

## The Registered Person



**The registered person or registered body** is the person or body with legal responsibility for operating the childcare provision. They have to meet Ofsted 'Suitable Person' requirements and ensure that ALL legal requirements are met in relation to ALL relevant legislation and good practice guidance including the Children Act 1989, Care Standards Act 2000, Disability Discrimination Act 1995, Children Act 2004, relevant Health and Safety, Food Hygiene and Fire Safety etc. Registered persons do not have to work with children or be involved in the day-to-day organisation of the childcare.

- An individual;
- A statutory body, such as the governing body of a school;
- A limited company;
- A voluntary committee.

If a body (not an individual) is applying for registration then they would need to identify a Nominated Person (NP) or Named Contact (NC). This person must have direct responsibility for managing, planning and monitoring the childcare and be in an appropriate position to act on behalf of the registered body e.g. the chair of the voluntary committee or the governing body (it would not be the head teacher).

The Nominated Person or Named Contact would usually complete and sign the application form and must be present at the registration visit along with the Person in Charge (PIC) who has day to day responsibility for the childcare.

Ofsted will carry out checks on the Person in Charge. For limited companies set up for the purpose of providing childcare and for voluntary committees, checks will also be carried out on all the directors or committee members.

The name on the Ofsted registration certificate will be the name of the registered person or body, and, in the case of a governing body, the name of the school.

The registered body is also responsible for requesting permission from Ofsted for any proposed changes to the premises, numbers of children and new staff appointed.

# Appendix B

## List of Contacts



Key Area	Job Title	Name	Contact number	Email
Early Years and Childcare Services	Quality Childcare Officer	Chris Martindale	(0191) 433 5136	christophermartindale@gateshead.gov.uk
	Business Support Officer	Susan Nichols	(0191) 433 5121	susannichols@gateshead.gov.uk
Legal and Corporate Services	Solicitor	Suzanne Gamble	(0191) 433 2124	suzannegamble@gateshead.gov.uk
Financial Support Services	Financial Support Services Officer	Carole Smith	(0191) 433 2747	carolesmith@gateshead.gov.uk
HR/Personnel	Staffing Support Manager	Pauline Purvis	(0191) 433 2744	paulinepurvis@gateshead.gov.uk
	Senior Personnel Advisor	Sandra Hewson	(0191) 433 2698	sandrahewson@gateshead.gov.uk
Planning and Resources	School Organisation and Development Manager	Sandra Punton	(0191) 433 3384	sandrapunton@gateshead.gov.uk