

Setting up a childcare provision



Providing high quality care and education for young children is enormously rewarding. It provides a much-needed service for local communities and, most importantly, makes a huge difference to the development and well-being of children. This factsheet provides a brief overview of the key factors involved.

Researching the need

It is important to assess what the demand for a new childcare provision is likely to be, what kind of childcare the families in the local community need and whether it can be met cost effectively. Families are the obvious partner; by building their ideas, views and values into the heart of your services, you will actively engage them to support and help develop your provision.

- Create opportunities to talk to parents; informally in local baby and toddler groups, libraries or launderettes, or through surveys.
- Childcare audits carried out by every local authority in England and Wales identify what type of provision is in the local area and what funding is available.
- The *Childcare and Early Years Survey of Parents* (DfE 2014) gives information on parents' use of childcare and their views and experiences.
- Your local Family Information Service can give you lists of other providers in the area with their hours of operation.

Legal structures

The legal structure has to be determined from the outset as this denotes the 'person' in law responsible for all manner of legal transactions,

such as taking out a business loan or lease, registering with Ofsted and employing staff.

Sole trader

A sole trader is an individual registered as self-employed with HM Revenue & Customs and running their own business; and is commonly used by childminders and individuals who start their own childcare group. As the sole trader you are the person with overall responsibility for the business and you have independence in deciding how it is run. Any profits made go to you directly. Consequently a sole trader does not have the support of others and is personally responsible for any liabilities or debts of the provision.

Partnership

A partnership is when two or more individuals share the responsibility for the management and profit of the business. Each partner can bring their own different skills and experience to the running of the provision and any profits made are shared between the partners. Problems can occur when there are disagreements, so it is recommended that a solicitor is contacted to draw up a legally binding partnership agreement or deed. All of the partners are liable for any debts run-up by the business. Each partner will need to contact HM Revenue & Customs to register for self-assessment.

Limited liability partnership (LLP)

A limited liability partnership is similar to a normal partnership, but with the additional benefit of limited personal liability. The limited liability partnership has its own legal identity

and takes on the responsibility for any debts. Forming a limited liability partnership requires registration with Companies House and is more complex and costly than a normal partnership, as complying with the Limited Liability Partnership Act means a range of extra legal duties.

Limited company

A limited company is a legal body in its own right and is separate from the board of directors who run and manage it. The directors' liability and personal financial risk is therefore limited in many cases, as debts and liabilities relating to the operations of the business are taken on by the company.

There are different types of limited companies, e.g. private company limited by guarantee, private company limited by shares, public limited company, community interest company; all of which must register with Companies House. A memorandum and articles of association is needed to register with Companies House. The memorandum of association outlines the first subscribers who wish to form a company and the articles of association contain the rules for running the company. The directors must comply with the Companies Act, which places legal duties on them, including the maintenance of the company's public records, e.g. filing of accounts.

The profits usually go to the directors, members or shareholders of the company; although the returns to individuals are limited for community interest companies, because the company assets are used primarily to benefit the

community. Community interest companies are also overseen by the Community Interest Company Regulator to ensure that their activities meet the requirements of a 'Community Interest Test'.

Charitable incorporated organisation (CIO)

A charity is an organisation set up exclusively for charitable purposes (e.g. the advancement of education) and for the benefit of the public; it cannot be used for personal profit. For this reason, charities are run by a committee of volunteers, called charity trustees. All profits made by a charitable provider have to go back towards funding facilities for the care and education of the children. Charities have to comply with the requirements of the Charities Acts, which means a range of legal duties, including preparing accounts and keeping records.

Funding through grant-providers and local government is more readily available for charities and most of the non-domestic council rates are waived or reduced. There are also tax benefits and charities can claim gift aid on donations from individuals who have paid UK tax. The HM Revenue & Customs Charities Helpline can provide further information on these benefits.

A CIO is most suited to charities with small to medium sized assets and liabilities; which would be applicable to most charitable childcare providers. Similarly to a limited company, a CIO has its own legal identity and can enter into contracts and incur liabilities directly rather than requiring trustees or members to do this on its behalf. A CIO must adopt a constitution (a legal

governing document that outlines how the charity is run and managed) and register with the Charity Commission in order to operate; and can do so by completing their online registration. The Pre-school Learning Alliance e-guide *Charitable Incorporated Organisations: Registering a childcare provider as a CIO*, contains a model constitution for a CIO and has been developed to support members of the Alliance through this process.

Charity: unincorporated association

The unincorporated association has the advantage of being straightforward to set up and manage; however, there are drawbacks, as the trustees and members may be liable for any debts run up by the charity. Following the introduction of the charitable incorporated organisation, this structure is unlikely to be the preferred option for charitable providers unless their liabilities are particularly small.

The Charity Commission website provides further information and an online application for registration as a new unincorporated charity. Charities set up as unincorporated associations also need to adopt a constitution. The *Pre-school Learning Alliance Model Pre-school Constitution 2011* has been approved by the Charity Commission and is available to Pre-school Learning Alliance members only.

Charitable company: limited by guarantee (incorporated charity)

A charitable company is quite simply an organisation that fulfils the requirements and is registered as a charity, as well as being a registered limited company. The directors of the

charitable company are also charity trustees. Therefore, unlike the directors of other types of companies, they cannot receive a salary for their role. All income and profits made by a charitable company limited by guarantee must be invested back into achieving the charity's purpose. The directors and members cannot gain financially from the charity proceeds.

A charitable company retains all the benefits of being a charity, with the additional benefit of limited personal liability for the trustees. It is recommended that a charity incorporate as a limited company if it is taking on a large liability, such as substantial contracts, a loan or ownership of property. However, registering with the Charity Commission and Companies House and complying with both the Charities Act and Companies Act, means a range of extra legal duties and can create a heavy administrative burden on the trustees/directors of the charity.

To set up as a charitable company limited by guarantee you first need to register with Companies House and then the Charity Commission. Pre-school Learning Alliance members can be guided through this process using the e-publication *The Complete Guide to Incorporation for Early Years Settings*.

Financial viability

Good financial management is important to the effective running of any organisation and it is vital that finances are appropriately planned, monitored and controlled. All providers must maintain and keep accurate financial records; using these to produce end-of-year accounts to

provide a record of financial performance over the past year.

You must be confident that the income you are going to receive from fees and any grants will be enough to cover all your outgoings and allow you to provide a high quality service to children and families. The Childcare Business Grants Scheme offers start-up grants of up to £1000 to support those establishing new childcare provision in covering some of the costs involved in registering as a childcare provider. Childcare providers can also register with their local authority to claim funding to provide part-time early years education places for three and four year old children, and eligible two year old children. Most providers offer the places as 15 hours a week; either as five hours over three days, or three hours over five days. Parents are not charged for the funded hours; however, the cost of any additional sessions is usually covered by parents.

Charities may also be able to access grants from charitable trust funds in order to set up and can often support their income through public fundraising; however, it is unwise to put yourselves in a position where you have to depend on fundraising to cover basic running costs.

Ofsted registration

Childcare providers looking after children under the age of eight years for more than two hours a day are required to register with The Office for Standards in Education, Children's Services and Skills (Ofsted). Ofsted inspect and regulate the quality and standards of care and education in childcare provision.

Ofsted maintains two compulsory registers of childcare provision that it inspects and regulates:

- the Early Years Register of childminders and early years provision for children under formal school age (i.e. before the 1st September following their fifth birthday); and
- the Childcare Register of childminders and provision of out-of-school care for children of formal school age up to eight years.

Depending on the services that you offer, Ofsted may register your provision on both the Early Years Register and the Childcare Register. The Childcare Register also has a voluntary part, should providers that are exempt from compulsory registration or offering services for children over eight years wish to register. The registration process should be relatively simple as long as your provision complies with the Safeguarding and Welfare Requirements and the Learning and Development Requirements of the Early Years Foundation Stage. However, it can take up to 25 weeks to complete, so allow plenty of time.

Providers registering with Ofsted must give details of the 'registered person' who has overall responsibility for the childcare provision. The 'registered person' relates to the legal structure you have formed. It can be an individual (e.g. the sole trader) or an organisation (e.g. partnership, trustees, company); the 'registered person' does not necessarily have to work with the children. The registration process includes a number of checks on the suitability of the individuals who make up the 'registered person'. These will

include an interview, criminal records (DBS) checks and health checks.

Where the 'registered person' is an organisation, Ofsted will carry out checks on all partners, trustees or directors as they have shared responsibility for the childcare provision. However, one individual, usually the most senior, must be given as the 'nominated person', to represent the organisation as the main contact with Ofsted. In childminding provision, Ofsted will check the suitability of the childminder, as well as anyone aged 16 years or over living or working on the premises. Ofsted will also visit to inspect the premises and equipment to ensure that it is suitable and safe for the children.

Early Years Foundation Stage

The Early Years Foundation Stage (EYFS) is a mandatory framework for all Ofsted registered childcare providers and schools caring for children from birth to five years. It was developed to ensure that all childcare services provide a safe and secure environment for children and support children's learning through carefully planned play activities that are fun and appropriate to their needs. The *Statutory Framework for the Early Years Foundation Stage* (2014) sets out the background and legal basis for the Early Years Foundation Stage and the overarching principles. The guidance differentiates between the learning and development and the safeguarding and welfare of young children and sets out requirements for each.

The Learning and Development Requirements ensure that children acquire the knowledge and

understanding, and develop the skills and processes that they need, and that providers make appropriate observations and assessments to determine the children's achievements. The Safeguarding and Welfare Requirements of young children ensure that practitioners provide for the safety and well-being of the children in their care. Ofsted Inspectors regulate and inspect childcare provision against the outcomes of the Early Years Foundation Stage and have the power to refuse registration or close a provision if it does not meet the requirements.

Premises

Childcare may be provided on domestic premises (e.g. in the home of a childminder) or on non-domestic premises (e.g. a pre-school in a community hall or nursery on a school site). The premises that you operate from must comply with the Safeguarding and Welfare Requirements and the Learning and Development Requirements of the Early Years Foundation Stage.

In choosing premises you will also need to consider whether the building is in a good state of repair, if it is safe and secure for the children, whether appropriate toilet and kitchen facilities are available, whether the premises are easy for families to get to and whether they are accessible to children and adults with disabilities. Children must have access to outdoor play, so do not forget to take into account the outside play space. Where no outside area is available, you will need to ensure that children still take part in outdoor

activities on a daily basis to comply with the Early Years Foundation Stage.

When sharing premises with other users, you will need to check that you can have sole use of the part of the premises used by the children during your hours of operation. It is also useful to determine whether equipment or children's work can be left out. Alternatively if you are planning a new building or adapting and using an existing building for a different purpose, you will need to seek planning permission.

Equipment

Prior to purchasing any equipment, it is important to consider the space and layout of your premises and your long-term curriculum plan, for which you will need to refer to the Early Years Foundation Stage for further guidance.

The environment should be regarded as a tool for supporting the children's learning and development. Activity areas should be developed to attract the children's interest and stimulate learning in all aspects of the curriculum, with carefully selected resources that will offer open-ended opportunities for play. The space and activities should reflect and promote positive images of diversity, encourage children and adults to enjoy playing and interacting with each other, whilst also promoting children's independence.

Once you have decided your long-term curriculum plan, start buying equipment and resources as soon as you can. The equipment should be of good quality and condition, and it should be safe for the children to use. Toys should display a kite mark and CE mark indicating that they comply with British and

European Safety Standards. You must ensure that the resources are appropriate for the age-range and various stages of development of the children. Natural materials should be used where possible.

Health and safety

The safety of the children and adults in the provision is a central theme throughout the Early Years Foundation Stage. Providers have a duty to develop effective procedures for ensuring that the provision is secure and that any risks are identified and managed through regular risk assessments; safeguarding and protecting children from harm or abuse; maintaining high standards of hygiene; regularly checking fire procedures and equipment; and ensuring that there is always a practitioner on the premises with a current paediatric first aid certificate.

It is important that you draw up a health and safety policy, which clearly sets out your aim for a safe and secure environment and includes procedures for identifying, reporting and dealing with risks, accidents and faulty equipment. All accidents at the provision must be properly recorded and the accident book checked regularly, as this gives a valuable insight into hazards in the provision. The Health and Safety Executive must be notified of major accidents, reportable diseases or dangerous occurrences under The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

All providers should be making routine safety checks of their premises and equipment on a daily basis before the children arrive. In

addition, you must also carry out a systematic risk assessment of your premises, equipment and the activities you offer, including trips and outings, to highlight any potential problems. You cannot, of course, eliminate all risks, but you can identify areas of high risk and then agree and implement action to reduce the likelihood of an incident, accident or injury.

Fire safety regulations place an emphasis on preventing fires and reducing risk to ensure the safety of everyone who uses the premises. The government guide *Fire Safety Risk Assessment – Educational Premises* highlights what must be done to comply with fire safety law and contains guidance on carrying out a fire risk assessment and identifying the general fire precautions that you need to have in place. You should seek professional advice when carrying out the fire risk assessment.

Employers must comply with the Health and Safety at Work regulations, which include having a written health and safety policy, displaying a *Health and Safety at Work* poster, undertaking a risk assessment of the premises and ensuring staff are given adequate health and safety training and advice on safe lifting.

Childcare providers that prepare snacks or meals on the premises must also comply with the hygiene standards set out in *Safer Food, Better Business* and will need to register as a food business with the local Environmental Health Department. For childminders, registration is not required separately as it will automatically be undertaken by Ofsted when you register as a childcare provider. Premises may be inspected to ensure that the food

preparation area is suitable and clean, food storage is adequate and hygiene procedures are in place for food preparation. All staff in group provision that are involved in handling and preparing food must also receive food hygiene training.

Insurance

Childcare providers must have adequate insurance cover. Some forms of insurance are required by law or for Ofsted registration, such as public liability insurance and employers' liability insurance (where applicable). Others are not legally required, but are still necessary because they provide protection for the provision and for those that use and are responsible for it.

Safeguarding children

Childcare providers have a duty to protect the children from harm and abuse. Every provider is required to have and implement a safeguarding children policy and procedures; which follow the guidance and procedures of the Local Safeguarding Children Board, and covers what happens if an allegation is made against a member of staff and the use of mobile phones and cameras in the provision.

In group provision, the registered person must obtain enhanced criminal records and barred list checks, and assess the on-going suitability of all staff that look after or have unsupervised access to the children to ensure that they are suitable to do so. Ofsted obtain these checks for childminders and all those aged 16 years or over that are working or living on the premises in childminding provision.

The Safeguarding and Welfare Requirements of the Early Years Foundation Stage specify the minimum number of adults needed to work with children to ensure they are adequately supervised.

Staff qualifications, training, support and skills

The skills and attitudes of the childcare practitioners are key factors in creating and maintaining quality. Choosing those adults, and supporting them in their work, is very important. The Safeguarding and Welfare Requirements of the Early Years Foundation Stage outline the requirements that providers must satisfy to ensure all those that work with children have the relevant qualifications, skills and experience and to provide on-going support to practitioners through effective supervision.

The Department for Education provide a list of the childcare qualifications suitable for practitioners delivering the Early Years Foundation Stage, which providers can search online to identify whether a practitioner in a group provision is suitably qualified.

Childminders must have completed a training course approved by the local authority before they can register with Ofsted. There must always be at least one person with a current paediatric first aid certificate working with the children in group and childminding provision.

Employer responsibilities

Any childcare provider that employs staff must obey the laws on employment. These will involve you fulfilling responsibilities to your staff (by respecting employees' legal rights) and to

the Government (by operating tax and other systems).

Employers should recognise that everyone has a contribution to make and take steps to ensure that their employees, job applicants, service users and volunteers are treated in a fair and consistent manner. Everyone has certain legal rights, including the right not to be discriminated or harassed on the grounds of:

- Disability.
- Race (ethnicity).
- Sex (gender) or gender reassignment.
- Sexual orientation.
- Marriage and civil partnership.
- Pregnancy and maternity.
- Religion or belief.
- Age.

Employers must register under the Pay As You Earn (PAYE) scheme with HM Revenue & Customs to operate staff payroll. Once registered, you will receive an information pack to help you get started.

Inclusion and diversity

For the benefit of all staff and families, equality and inclusion must be embraced throughout your provision. The Equality Act 2010 requires childcare providers to ensure their policies, procedures and practices promote equality of opportunity and prevent discrimination towards children and adults in the provision. This includes making reasonable adjustments to ensure that you do not make it difficult for disabled children and adults to make use of a

service. You will need to consider how you can create an environment where everyone feels equally valued and included, and no-one is discriminated against, in order to provide the children with the opportunity to learn to respect and value people who are different to themselves.

Providers also have a duty to regard the *Special Educational Needs and disability Code of Practice* (2014) when meeting the needs of children with special educational needs (SEND) and developing a special educational needs policy. The code of practice highlights how childcare providers should provide a consistent approach to identify, assess and provide for children with SEND. Each provider should also have a designated Special Educational Needs Co-ordinator, who is responsible for co-ordinating the provision for children with SEN.

Joining the Pre-school Learning Alliance

Whatever type of provision you decide to open, you can gain support by joining the Pre-school Learning Alliance. There are many benefits to becoming a member:

- An exclusive free continuing professional development (CPD) approved online training package.
- Practical and accessible information, advice and free factsheets.
- Access to our comprehensive insurance scheme, underwritten by RSA Insurance.
- Confidential 24-hour legal helpline offering advice on employment, tax, VAT and premises hire.

- 20% off our range of specialist publications; including exclusive right to purchase printed copies of the *Statutory Framework for the Early Years Foundation Stage*.
- *Under 5* magazine, 10 times a year, covering issues affecting the childcare sector.
- An exclusive discount on *Reflecting on Quality*, our leading quality improvement scheme.
- Model governing documents for charities helping to fast-track applications for registration.
- Generous discounts and preferential booking for all Alliance-run national events.
- Access to support at a local level in many areas.
- Fantastic offers for groups from top early years brands, including TTS, The Consortium and EY Essential nursery management software.
- A chance to influence the future direction of the Alliance and the early years sector with the opportunity to vote at our AGM.

Useful publications

The Pre-school Learning Alliance produces a number of publications on the various aspects discussed within this document. For further details visit www.pre-school.org.uk/shop.

- *Statutory Framework for the EYFS* (DfE) www.gov.uk
- *Fire Safety Risk Assessment – Educational Premises* (HMG) www.communities.gov.uk

- *Guide to Registration on the Early Years Register (Ofsted)* www.ofsted.gov.uk
- *Health and Safety at Work Poster (HSE)* www.hse.gov.uk
- *Safer Food, Better Business* (Food Standards Agency) www.food.gov.uk
- *SEND Code of Practice* (DfE) www.gov.uk
- *Working Together to Safeguard Children* (HMG) www.gov.uk

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- Childcare Business Grants Scheme
www.childcarebusinessgrants.dcms.gov.uk
- Community Interest Company Regulator
www.cicregulator.gov.uk
- Companies House
www.companieshouse.gov.uk
- Department for Education (DfE)
www.gov.uk/df
- HM Revenue & Customs
www.hmrc.gov.uk
- Early Years Qualifications Finder
www.education.gov.uk/eypqd

voluntary sector provider of quality affordable childcare and education in England. An educational charity, the Alliance represents the interests of over 14,000 member settings who deliver care and learning to over 800,000 families every year. We offer information and advice, produce specialist publications, run acclaimed training and accreditation schemes and campaign to influence early years policy and practice.

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The Pre-school Learning Alliance is the largest early years membership organisation and