

# Transfers of voluntary managed pre-schools to school managed

## Work Flow Setting

Discuss proposal at a committee level. Staff must not be present at this meeting. Confidentiality is crucial at this stage.

If the committee decide to go ahead a preliminary EGM must be called in line with the dissolution clause in the setting's governing document.

Staff should be informed of the plans at this stage.

Members should be informed about any changes to the provision post transfer. This should include opening times, fee structure and staffing structure.

(See **Governing Document** below)

If the membership vote in favour of the transfer the committee can then go ahead with the process.

The provider will need to have permission from any regulator or member body e.g Early Years Alliance (EYA) and/or Charity Commission for any transfer to take place.

(See **Approval** below)

Once the approval letter/email has been received from the regulator a dissolution EGM will need to be called. This needs to be in line with the Governing Documents Dissolution Clause.

(See **Governing Documents** below)

Staff may be subject to Transfer of Undertakings (Protection of Employment) TuPe legislation. Legal advice must be sought.

(See **TuPe** below)

On the date of the final transfer the charity must be solvent.

(See **Charity Closure** below)

When the provision has been transferred the Charity and Ofsted registration will need to be officially closed.

## Work Flow School

The governing body/MAT need to agree the transfer in principle. Academies will need to seek guidance from the ESFA.

Confidentiality is crucial at this stage.

School will need to carry out due diligence looking at pre-school finances, forecasts, occupancy, staff contracts etc.

School will need to seek advice on TuPe, staff contracts and salaries from WES if applicable and ensure financial plans are informed.

(See **TuPe** below)

The governing body/MAT must agree the transfer based on all information gathered.

Information will need to be produced about the school's plans post transfer. For example opening hours, staffing levels etc. This information will need to be available for the setting's preliminary EGM meeting.

It is helpful to have a representative from the school present at the preliminary EGM to answer any questions from members.

## **Process for settings**

### **Governing Document**

All charitable organisations will have a governing document. This will be in the form of a constitution or article of association. To obtain a copy of a setting's governing document, if this cannot be located, contact the Charity Commission with the Charity's number. The Charity Commission will send you a copy by email.

The governing document will contain a **dissolution clause** this will outline the steps that need to be taken to dissolve the charity and/or transfer the assets to a different organisation.

Voting on any resolution for closure/transfer will need to include the charity's members. These are usually the parents/carers of the children that attend the setting. This is explained in the governing document under the **Membership clause**.

The group will also need to refer to the calling an **Annual General Meeting (AGM) / Extraordinary General Meeting (EGM) clauses**. These outline the notice that needs to be given and how many members need to attend for the meeting to be quorate.

Providers will need to hold a preliminary EGM to give the Committee a mandate to investigate the proposed closure. This must be followed by an EGM to finally close the Charity.

### **Transfer of Assets (if following the EYA constitution/memorandum and articles)**

Approval from the Early Years Alliance's (EYA) Information Service Team will be needed to transfer any assets to another organisation.

Any transfer must be in line with the group's dissolution clause. This usually states that assets should be passed to a like-minded charity or the EYA. This means that the intended recipient charity must have similar objects (what the charity was set up to do) to the charity that is closing. The objects of a charity form part of the governing document. The email asking for approval will need to be accompanied by the following documents:-

- Preliminary EGM minutes – including a list of attendees and the voting outcome i.e. how many for and against
- A copy of the recipient organisation's governing document
- A letter from the recipient organisation stating that assets will only be necessary if the recipient organisation's objects are general i.e. 'education'

**Transferring assets to an Academy** – most academies are set up as charities. The EYA may be reluctant to pass assets to a charity that has wide ranging educational charitable objects. You may need to get a letter, signed by the academy trustees, guaranteeing that any transferred assets will be used for the benefit of the under 5's only. It is helpful to ask for the current objects of pre-school charity to be quoted in the letter. The Academy will need to seek guidance from the ESFA and check their Funding Agreement to ensure they are able to take on extended services.

**Transferring assets to a voluntary aided/maintained school** – the school will have trustees. Again, you will need to get a letter, signed by the school's trustees, guaranteeing that any transferred assets will be used for the benefit of the under 5's only. It is helpful to ask for the current objects of pre-school charity to be quoted in the letter.

**Transferring assets to a maintained school** – this is often challenging. The EYA may not approve a transfer to a maintained school or a PTA. An option that could be explored is for the governors to set up a trust with similar objects to the transferring pre-school. If approved the trust can then receive the assets.

The school should take legal advice when setting up a trust.

### Approval for those who do not have a EYA model constitution

The dissolution clause in the constitution/governing document will need to be followed. Approval for any transfer of charitable assets will need to be given by the Charity Commission. More information can be found on the **Closing a Charity** webpage.

### Additional Information

#### **TUPE**

When transferring a service staff have rights that must be considered. All employed staff, including cleaners and administrators, may have the right to be transferred with the service. Legal advice must be sought from the provider's Employee Liability Insurer.

#### **Premises**

If the provider operates under a lease you will need to check the break clause. This will include notice periods and, in some cases, removal of temporary buildings. The provider will need to inform the lease holder of their intentions to transfer services/close.

#### **Charity Closure**

The charity must be solvent when closed. All outstanding debts must be settled. It is advisable to plan closure of services for the end of term. This will avoid having to repay any Early Education Funding and will be helpful to parents looking for alternative provision.

Final accounts will need to be produced.

The charity can be dissolved using the Closing a charity pages of the Charity Commission website. Guidance documents are also available from the Charity Commission.

The following organisations will need to be informed about the transfer/closure:

- Ofsted
- Early Education Funding Team – [eyfunding@warwickshire.gov.uk](mailto:eyfunding@warwickshire.gov.uk)
- Early Years & Childcare Sufficiency & Business Support – [earlyyears@warwickshire.gov.uk](mailto:earlyyears@warwickshire.gov.uk)
- Family Information Service Team – [fis@warwickshire.gov.uk](mailto:fis@warwickshire.gov.uk)
- Your landlord if you rent/lease land/premises – Estates Team for providers that have a lease with Warwickshire County Council
- Insurance Company
- District Council
- Membership Organisation – contact the EYA and any other membership organisations
- Magazine subscriptions – cancel any subscriptions
- Suppliers/utilities – for e.g. your milkman, gas/electricity supplier, education resource suppliers etc.
- Bank and building society account – This should be left until all outstanding receipts and payments have been cleared and your group has finally dissolved. A month is often sufficient for this.

***Disclaimer: This guidance is provided to support settings through a transfer of provision. This list is not exhaustive and is for general guidance only. Settings must ensure they seek the appropriate advice from legal representatives.***