

Setting up a nursery

- for providers in England -

A free Information Guide

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Introduction and personal experiences

It's a tough time to start a new business – and you need to be committed and determined – but if working with children is your passion and dream, then owning a nursery might be something to consider.

Things to think about:

This guidance is as comprehensive as I can make it, but it is not (and can never be) complete because I am not a lawyer or solicitor or business expert. The guidance is taken from my notes when buying an out-of-school club, alongside feedback and information from colleagues who have bought or set up nurseries from scratch. Buying an out-of-school club is a similar process to buying a nursery – and believe me, I made mistakes.

My main mistakes were:

- Thinking the best of people.
- Not paying for enough legal advice – thinking I could do it all myself.
- Thinking the Ofsted registration process would be straightforward because I am already an early years provider – it was very long, very frustrating, very over-complicated and very nearly broke me.

Things I was lucky with:

- I rented the premises from a local church and they were brilliant, especially with fixing broken bits and bobs and ensuring things like the kitchen was well appointed and the electrics were PAT tested. They also agreed to freeze the rent to help me in my first year – it's always worth asking!
- Parents stuck by me even when things were sticky at the start.
- My knowledge of the EYFS, learning and development requirements and safeguarding / child protection allowed me to ace the Ofsted pre-registration inspection. Even though I was only intending to be the owner at the start, Ofsted still expected me to undergo a rigorous pre-registration inspection.
- I had some brilliant students who stayed with me the entire time – out of school clubs often rely on student support, especially if there's a walking bus from a local school.

**Note that the attached guidance does not provide
a complete or authoritative statement of the law
and does not constitute legal advice.**

What do you want to do?

A nursery is a group setting on non-domestic premises, with staff who care for and educate children up to the age of 5 years. There are different types of nurseries:

- Private / independently owned – either buying or renting a suitable property.
- Not for profit – usually linked to a community centre or religious organisation.
- State funded – attached to a school.

I cannot advise on a state funded nursery because I don't have any experience in this, so I will focus here on private and not-for-profit settings. Whether you are running a nursery for a profit or to give back to the local community, you will still need to go through the same set-up process.

Setting up a nursery from scratch – there are many advantages to setting up a nursery, for example:

- Choosing or buying your own premises.
- Choosing your own staff (see TUPE information to follow).
- Configuring your nursery to how you want it and creating your own brand from the start.
- Not taking on a nursery with a previous bad reputation or similar.
- Designing and using your own logo and marketing.

Buying a business – if you don't have the time, knowledge or funds to set up a business from scratch, then buying an existing business is a good alternative. Some of the advantages include:

- It will have the necessary planning permission.
- You will already have a staff team.
- You will inherit income from parents and children from day 1.
- Ofsted will already know the business – although that might not always speed up the application and transfer process.

However, there are disadvantages, especially if you struggle with your inherited staff team or you don't like the way the nursery is managed. You will also take over the previous owner's brand, management style etc which might not align with your own and change can be unpopular and cause bad feeling.

You should also get an independent valuation before you start the process. The current owner will base their asking price on, for example, current profit and loss, property value (unless it is a leasehold), goodwill and fixtures and fittings etc but an independent valuation might not agree with their assessment.

Buying into a franchise – if you are unsure about taking on the responsibility of a nursery yourself, you might want to buy into a franchise which trains and supports you in return for a monthly payment. Note that the fee might be high (check your financial obligations with a legal advisor first) and there will be constraints on what you can do.

Start your business planning

Whether you want to run your business as a sole trader, in a partnership or as a limited company, your business plan is the document or tool that adds structure to your proposal and helps you focus your objectives on an achievable and realistic target.

It is, therefore, important to start your business plan from day 1 and keep it updated. A good business plan will support you to stay on track with your purchase, remain within budget and, if required, can be used to help you secure funding. It should cover every aspect of what your potential business might look like, from purchase to setup and management.

Start your business plan by talking about you:

About you –

- Your name and your contact details.
- Your skills, qualifications and experience.
- Your values – what you want to achieve in this process.

About your business –

- Your company details and a summary of your business idea / model.
- Services you will offer.
- Due diligence – come back to it over the weeks and months and ensure you have covered everything.
- Positives – local demand, flexible opening hours, extra activities, demographics.
- Negatives – local competition, low Govt funding rates.
- Finances – where the funding is coming from, start up and ongoing costs, charges for places, salaries, projected profit and loss.
- Marketing success – what are your milestones? For example, number of customers by 3 months; Ofsted good or outstanding inspection by 30 months; total net profit by the end of year 3.
- Planned opening date.

Keep it short and to the point at this stage – you will build it as you go along the process.

Your business plan will be the first contact that potential investors have with your business, so tell them about why they should invest in you. If you don't need investment, it will be a plan that guides you through your purchase and should be used as a working document. Focus on your SMART targets and your SWOT analysis as you work through the various sections.

SMART targets

When you write your business plan, ensure your targets are:

- Specific – simple and sensible.
- Measurable – meaningful and motivating.
- Achievable – agreed with all stakeholders and attainable.
- Relevant – reasonable, realistic, resourced and results-based.
- Time bound – time-limited.

For example: if you start the purchase process in August with the intention of being completed and running your own nursery by Christmas, you are not following the advice to be time-bound because it can take Ofsted 6 months or longer to register a nursery. You will need to put steps in place to ensure the current owner retains their registration and an interest in the business until completion.

A SWOT analysis

You should also consider a SWOT analysis to keep your business planning on track.

- Strengths – your knowledge, skills and experience in early years; an already established and thriving business, a strong business model; amazing outside area; good staff already on board.
- Weaknesses – neglected building; outside space lacks energy; staff threatening to leave; disengaged owner; business currently losing money; poor Ofsted grade.
- Opportunities – in a busy urban area; close to local schools; easy access to bus and train services.
- Threats – lots of local competition; financial concerns; time constraints.

For example:

- **Strengths** – you are in an area of local deprivation and know lots of parents will take up the 2-, 3- and 4-year-old government funding.
- **Weaknesses** – the government funding pays significantly less than you need to break even.
- **Opportunities** – there is a new housing estate close by being marketed at families, so you should be able to bring in lots of parents who will pay full fees to offset the loss.
- **Threats** – you cannot calculate a more accurate break-even point without further information.

Is your nursery going to be financially viable when you look at it this way?

Do your due diligence

Throughout the purchase process, you should consider due diligence – checking that what you are doing is the right thing to do. This will be partly the responsibility of your legal advisors, but you should also check each step of the process yourself because the final liability rests with you:

- Are the business financials correct – cashflow, profit and loss?
- Are appropriate insurances in place - public liability, employers' liability, income protection, critical illness, car or van business cover (if needed), property cover etc?
- Are contracts with parents and suppliers secure?
- Has the lease agreement for the premises been checked and agreed?
- Are health and safety and risk management procedures in place?
- Is the manager or a staff member running down the business during the sale process?
- Are current employment contracts secure – are there, for example, any ongoing disputes?
- What do previous parents / staff say about the setting on social media?
- Are there any issues with parent payments including outstanding fees?
- Are there any ongoing or potential legal disputes?

As part of making premises decisions, you will need to think about what you are buying. For example, if you are buying an established nursery and you decide to buy the total capital of the business, you will take on present and historic liabilities linked to the business. However, if you buy only the assets of the business, you might need to re-employ staff, re-negotiate supplier contracts and renew contracts with parents.

Your qualifications and experience

As an owner, you do not need any formal qualifications or experience in early years to open a nursery, but knowledge of the statutory requirements and safeguarding / child protection would be an advantage.

If you want to manage your own nursery, the statutory requirements state (paragraph 3.28) : 'In settings on the early years register, the manager must hold an approved level 3 qualification or above and at least half of all other staff must hold at least an approved level 2 qualification. The manager should have at least two years' experience of working in an early years setting or have at least two years' other suitable experience.'

The qualification requirements are set out in the Early Years Foundation Stage (EYFS) 2021 –

<https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>.

Your business structure

Decide how you want to lead and manage your nursery. For example, do you want to be a...?

- Sole trader.
- Traditional partnership.
- Limited liability partnership (LLP) or limited liability company.

This will mean learning what each of the terms mean and working it through for yourself. For example, legally you might find it best to set up as an LLP or a company as you will be employing staff and you will need to enter multiple contracts with suppliers; if you want to start a partnership, you will need a comprehensive partnership agreement in place before you move forwards with the purchase process.

Note that if you change the structure of your nursery business after you have registered with Ofsted, it is likely that you will need to go through the registration inspection again as a new provider.

The local competition

As part of your due diligence, it makes sense to check your local competition:

- Are local nurseries, pre-schools and childminders full?
- Are there any new build estates or large workplaces in the area?
- What is the average local population age?
- Are parents in the area looking for and unable to find childcare?
- What is the average childcare cost at different settings?
- Is the Local Authority aware of any threats, changes or opportunities that might help you?

The local census and your Local Authority will have some of the answers.

You can use your SWOT analysis to help you with this process, for example:

****Strengths** – you have a strong unique selling point and staff ready to sign on with you.

****Weaknesses** – there are lots of local nurseries / childminders advertising empty spaces.

****Opportunities** – you see chances for collaboration and building strong partnerships.

****Threats** – a colleague has told you that a new nursery won't be popular in the community.

With this SWOT analysis in place, do you want to continue with the purchase?

You can use your own money to build your own brand, keeping your profits – or you can buy into an existing brand. You might also be interested in taking up an opportunity to become a franchisee and pay part of your profit to the franchise group.

There are significant start-up costs if you want to buy your own nursery. For example, if you are an existing childminder, you might already have some resources, but you will need more and will need to think on a much bigger scale, considering both start-up costs and ongoing costs – plus it's best to have finances in reserve because unexpected costs are likely to pop up as you go along.

If you are taking out a loan to buy your nursery, it is best practice to have the loan agreement checked by your solicitor to ensure you understand all your obligations and liabilities. As part of this process and due diligence, when you understand the loan agreement fully you will be able to match your repayment obligations against expected cashflow and revenue from the nursery when it is up and running.

Start-up costs might include, for example:

- Purchase cost of your nursery and premises
- Installing kitchen facilities if needed.
- Legal fees – buying a business, dealing with a landlord or transferring the leasehold.
- Ofsted registration fee.
- Paying staff while waiting for Ofsted to register you.
- Payment liabilities if you are taking on an existing nursery.
- Builders and decorators to make changes to the building or outside area.

Setting up – you will need to consider how you will fit out the play and learning environment and other areas of your nursery, for example:

- Resources for children's learning to cover all areas of learning in the EYFS.
- First aid training courses and kits for inside, outside and outings.
- Initial staff training.
- Furniture for staff and children.
- Setting up the staff room.
- Outside play toys and games.
- IT / office equipment.
- Kitchen resources and initial food budgets.
- Marketing funds – website and logo designer, signage, local advertising etc.

Ongoing costs will include, for example:

- Accountant fees.
- Cleaners.
- Chef / cook and food.
- Information Commissioner's Office (ICO) registration – data protection regulation.
- Ofsted annual fee.
- HR (human resources) support if you decide to buy in a company.
- Insurances – public liability, employer's liability, professional indemnity, commercial property, business interruption and personal accident cover might be advised. Ensure policies cover taking children off the premises and add vehicle insurance if you take children in a car or minibus (for example).
- PAT testing.
- Health and safety obligations.
- Training updates – safeguarding / child protection and paediatric first aid as a minimum.
- Rental of the premises if you are not buying outright.
- Resource replacement as toys and equipment break / wear out.
- Staffing costs – monthly pay, pension contributions, uniform, training etc.
- Your own salary.
- Waste removal.
- Utilities charges – council tax, water rates, gas and electricity.

Tip from a new nursery owner

A colleague who recently bought a day nursery advises: 'Allow for everything to cost far more than you expect and to take far more time than you could possibly imagine.'

Finding the right premises

Premises you buy or rent to use for early years children must have D1 planning permission (the essential planning designation for a building used as a nursery, school or other educational institution). Note that colleagues who have been through the process advise changing D1 use from, for example, a church to a day nursery, is much easier than trying to obtain D1 user for a house.

Premises must also be safe and suitable for use by children as set out in the statutory framework. You will need to ensure they have outside space as well as a safe indoor environment and parking for staff and parents on the premises or nearby.

When choosing premises, you should consider how many children you will want to welcome to your nursery because there are statutory floor space ratios set out in the EYFS:

- 0 – 2 years – 3.5 m² / child.
- 2-3 years – 2.5 m² / child.
- 3-5 years – 2.3 m² / child.

Advice from colleagues who have bought nurseries is to buy the biggest floor space you can afford, especially if you are thinking about saleability in the future, because anecdotal evidence suggests that the bigger chains who are looking to purchase nurseries will be more interested in 50 – 70 place settings in an urban area.

When choosing your premises, you should also consider:

- Are the premises close to your target market?
- Can staff / parents access the nursery using public transport?
- Is the neighbourhood safe and well-lit – think about access on dark mornings and nights in winter?
- Do the premises have enough floor space (see floor space ratios)?
- Can you separate an area for babies and a place for children to eat?
- Is there space for a staff room, set aside from the playrooms?
- Where will your office space be?
- Is there a good kitchen with food storage?
- Are there enough toilets and hand washing facilities?
- Will you need to use upstairs rooms that don't have easy access to a garden?

Buying vs leasing

Buying an existing nursery – be proactive and start the process as early as possible.

To ensure continuity for the staff and children, you might want to put a Sales and Purchase Agreement in place which confirms the seller will maintain their Ofsted registration until after the completion date and until your registration is confirmed by Ofsted.

For example, you might negotiate with the seller for them to provide consultancy services and to operate the business while maintaining their existing Ofsted registration and in return, you may be required to provide an indemnity to the seller that during the transition period. This means that, for example, if Ofsted require the seller to pay their annual fee (for example) you would agree to pay it for them along with any costs associated with their continued liability.

At the same time, you should speak to your solicitor about putting exclusivity and confidentiality agreements into place, so your purchase is protected as much as reasonably practicable.

Transferring a commercial lease – you will need a deed of assignment to transfer the ownership from the seller to you. This will also require the landlord's consent and you will need a solicitor to check the lease.

This might not be a quick process if the landlord is happy with the current tenant and doesn't want to sign off to a new one and there are significant legal costs involved here – you will need to pay costs for your purchase and possibly the landlord's legal fees. It can also take a long time and involve multiple solicitors, so will need to be budgeted for and managed proactively.

If you are buying a property, you will need to check the terms of the lease – you will need to check the terms carefully, including for example:

- How many years are left on the leasehold.
- Rent review frequency and likely increase.
- Repair obligations – who is responsible?
- Health and safety checks – who is responsible?
- Service charges.
- Whether it is a 'protected' lease or not.
- Whether there are any local changes expected, such as a compulsory purchase order on land.
- Car park accessibility.

Other considerations include producing a sale document to cover, for example, what is being sold, where it is, how it is to be transferred etc. There are sample agreements online or your legal advisor will be able to advise further. There will also be warranties – legally binding promises about the business and documents relating to the transfer of company assets etc. Your solicitor will be able to give you advice on the steps to take to ensure you are protected through the process.

Health and safety legislation

Before setting up and running your nursery, you need to consider health and safety requirements set out in the statutory framework and any other liabilities including, for example:

- Food safety – qualifications, knowledge of the 14 allergens legislation, cross contamination and storage details in Safer Food Better Business (SFBB). Note that if you intend to serve food which is cooked on-site, you might need to register with your local authority and apply for additional licences, including a food hygiene rating from the local Food Standards Agency. Food you provide must be healthy and nutritious to comply with the EYFS.
- Building maintenance arrangements.
- COSHH (control of substances hazardous to health) information covering dangers substances and equipment in the setting.
- Risk assessments – initial and ongoing – with an action plan to minimise risks.
- Fire safety and evacuation risk assessments, a fire officer's report, plans for carrying out fire practices, control equipment detailed in the EYFS.
- Accident record keeping and reporting.
- Medication record keeping.
- Furniture risk assessments – it must be in good condition, fastened to the wall etc.
- Illness and infection control procedures including HSE / UK Health Protection Agency guidance.

You must also understand how to comply with the statutory framework and Ofsted reporting procedures.

Staffing requirements

Find the right staff

Staffing your nursery can be challenging – the right team will buy into your values and lead your nursery forwards; staff who don't enjoy being around children or who have little patience will not share your vision.

Staff ratios

There are minimum staffing ratios in nurseries set out clearly in the statutory framework.

In addition to the manager, who must hold an approved level 3 qualification or above (EYFS 3.28), at least half of all other staff must hold at least an approved level 2 qualification. There must also be a 'capable and qualified' named deputy.

You should use the Govt qualifications finder to ensure they are qualified for their role -

<https://www.gov.uk/guidance/early-years-qualifications-finder>.

EYFS 3.32 – under 2s

**1 adult to 3 children.

**At least 1 level 3 and suitably experienced at working with under 2s.

**Half of other staff level 2.

**Half of staff baby trained.

EYFS 3.33 – 2-year-olds

**1 adult to 4 children.

**At least 1 level 3.

**Half of other staff level 2.

EYFS 3.34 – 3+ year olds with a level 6 in the room

**1 adult to 13 children.

**At least 1 level 3.

EYFS 3.35 – 3+ year olds with no level 6 in the room

**1 adult to 8 children.

**At least 1 level 3.

**Half of other staff level 2.

EYFS 3.30 – there are further requirements related to apprentices and trainees.

Staff training

All staff must have **induction training** as detailed in EYFS 3.21, to cover:

- Emergency evacuation procedures.
- Safeguarding and child protection
- Health and safety.
- Paediatric first aid – EYFS 3.25.
- Food hygiene – EYFS 3.49.
- Data protection legislation – GDPR.

You will also need to ensure staff know how to manage medication and other statutory record keeping etc.

Ongoing training, support and supervision must also be provided and you might want to train staff in, for example, supporting challenging behaviour and how to deliver the nursery curriculum, so provision is seamless across all age ranges.

Staff and TUPE

If you are taking on an existing business, you might be required to take on existing staff. From my personal experience, the Transfer of Undertakings (Protection of Employment) regulations (TUPE) are a can of worms best left to your legal advisor unless you are fully cognisant with the legalities of transferring staff from one employer to another. Yes, it will cost you money in the short-term because it is another job to outsource, but good legal advice will protect you from possible legal action in the future.

Ofsted registration

You must register with the Office for Standards in Education, Children's Services and Skills (Ofsted) if you are offering childcare to children under the age of 5 years for more than 2 hours a day and working with more than 3 staff members at the same time in England.

Note that existing nursery providers have reported that registering with Ofsted is a slow and often very frustrating process. For example, before you apply to Ofsted, bear in mind that the application process can take more than 26 weeks – that's 6+ months. You will find some initial information here –

<https://www.gov.uk/government/collections/starting-a-nursery-or-other-daycare-and-running-the-business>.

You must be over the age of 18 years and will need the following in place:

- Details of current or previous registrations with Ofsted.
Note – if you are already registered with Ofsted you can use this form to add a setting to your registration - <https://www.gov.uk/guidance/add-a-setting-to-your-application-to-register-a-daycare-eyes>.
- DBS checks through Capita.
- Health check from your doctor (there might be a fee)..
- Legal right to work in the UK.
- Good enough English to ensure the children's welfare and safety and keep records in English.
- Ensure each person who will be in governance applies and links to your application – use the EY2 form.

Building your brand

Branding is about a logo and a colour scheme and more... it's about how you want to sell your business to parents, from initial communication, to pedagogy, to practice and beyond. If you are already working in early years, you might have a clear view of where you want to go with your business, or you might want to retain the current marketing at least at the start.

Alternatively, you might want to buy the services of a branding consultant to help you turn your vision into reality. Your brand should flow through advertising –

- **Identifiable logo.
- **Nursery website.
- **Emails and other communications.
- **Outside signage.
- **Parent initial and ongoing information.
- **Policies and procedures.
- **Social media presence.
- **Advertising leaflets.
- **Staff uniform etc.

Advertising is a continual process and your brand will support your advertising if it is carefully thought through from the start.

Parent partnerships

Parents are an essential part of your business structure – without parents and families in your local area, your nursery will fail. It is important that you put some thought into how you will attract and retain parents and work with them to support their children's care and learning.

Marketing to parents might include, for example, leaflets, banners and signage and you might plan open days to encourage local parents to visit the nursery – think about how you will advertise these for best success. If you are taking over an existing nursery, you will already have parents on roll – how will you reassure them that a new owner does not mean huge changes for them and their children?

There are many different requirements in the EYFS in relation to working with parents including what information must be shared with them and when they must be consulted about their child's learning, development and progress and Ofsted try to speak to parents during their inspections, so it is important you get this part of the business working smoothly.

Setting up a nursery – checklist

- ☐ Start your business plan – focus throughout on your SMART targets and SWOT analysis.
- ☐ Consider your place in the nursery – owner, owner / manager. Do you need to take qualifications or update your training first?
- ☐ Fix a budget – look at how much money you have and think about whether you need a business loan or to investigate other funding options.
- ☐ Decide what type of nursery you want to buy – new, franchise, already open, community group etc.
- ☐ Speak to business advisors / solicitors and put a team in place to support you.
- ☐ Check your local area for competition and opportunities – will your nursery be sustainable?
- ☐ Locate premises – you will need enough floor space, plus a kitchen, toilets, places to change nappies, outside spaces, parking etc. When you find premises, make sure you can obtain D1 planning permission before you enter into any agreements or promises.
- ☐ If you are buying an existing business, try to look round as a parent (or grandparent) first and where possible speak to existing parents; look at Ofsted inspection reports; check social media comments. Trust your first impressions and walk away if you are unsure.
- ☐ Think about business potential – how can you improve or expand the nursery you are looking to buy?
- ☐ Find your break-even point – the floor space of your premises will tell you how many children you can care for... which will tell you how many staff you will need... which will tell you the scale of the service you will be able to offer. These calculations will help you work towards your break-even point.
- ☐ Register with Ofsted – this can take 6+ months, so ensure if you are buying from an existing provider, you have agreements in place to keep the nursery running while you navigate the registration process.
- ☐ Build your brand and start advertising. Think about: what will it take to turn your dream into reality?