



My Ref: FOI 6412
Enquiries to: Information Requests
E-Mail: informationrequests@barnsley.gov.uk

Dear Requester,

Re: Request for Information – Freedom of Information Act 2000

I wish to confirm that the council has completed its search for the information which you requested.

The information requested and our findings are as follows: -

My request concerns the ongoing transfer and outsourcing of the council's six in-house EYFS day nurseries based within the local Family Hubs (including settings in Thurnscoe, Worsbrough, Athersley, Grimethorpe, Darfield and Bolton on Dearne) to external Private, Voluntary, and Independent (PVI) providers. Please provide the information, documentation, and specific legal frameworks requested below:

1. Procurement and Contractual Frameworks

- 1.1 Please provide the exact name and legal classification of the contractual agreement, procurement vehicle, or lease arrangement being used to transfer these six nursery provisions to the incoming PVI operators.**

The Council has not undertaken a procurement exercise in relation to the transfer of the nursery provision. The arrangements relate to the transfer of service operation rather than the procurement of services from a provider through a competitive tendering process.

As no procurement exercise has been conducted, the Council does not hold procurement documentation of the type referred to in the request. Additionally, due to the circumstances of the transfer in that we are not entering into a contract for provider to deliver a service on behalf of the council and they are running a nursery as their own commercial interest there is no contractual agreement.

A formal lease agreement will be in place based on individual heads of terms as negotiated with the provider for each site. Any lease agreement will be for an agreed fixed term.

- 1.2 Please provide a copy of the procurement specification, service tender, or invitation to tender (ITT) documents issued to potential incoming providers for these settings.**

As this process did not involve a procurement exercise and instead relates to the transfer of a childcare operation, the Council does not hold procurement documentation such as an invitation to tender, procurement specification, tender evaluation records, procurement vehicle documentation or contract award reports of the type referred to in the request.

- **1.3 Please provide a copy of the standard Funding Agreement, Service Level Agreement (SLA), or commercial lease contract that the incoming PVI providers are required to sign to operate from the Family Hub venues.**

Due to the circumstances of the transfer in that we are not entering into a contract for the provider to deliver a service on behalf of the council and they are running a nursery as their own commercial interest, there is no standard funding agreement or service level agreement that the incoming PVI provider is required to sign to operate from the family hub venues.

The lease agreement for each site has not yet been entered into so we are unable to provide a copy.

2. Application of the Best Value Authorities Staff Transfers (Pensions) Direction 2007

- **2.1 Please provide any internal or external legal advice, briefings, or policy documents held by the council regarding its position that the *Best Value Authorities Staff Transfers (Pensions) Direction 2007* does not apply to this outsourcing process.**

We are advised by legal that we are not contracting out the provision of services and accordingly paragraph 5 of the Best Value Authorities Staff Transfer (Pensions) Direction 2007 does not apply to the transfer process. For clarity this is a transfer of undertaking and not an outsourcing activity.

- **2.2 Please provide any records of correspondence, reports, or minutes from Cabinet or committee meetings where the "non-statutory" or "discretionary" status of these nursery buildings was used to justify a decision not to enforce public sector pension protections during a service transfer.**

The nursery transformation proposal was part of the MTFs report that was considered at Full council on the 27 February 2025. Papers for the meeting can be viewed via the Barnsley Council website - [Agenda for Full Council on Thursday 27 February 2025, 10.00 am](#). Prior to the full council meeting an all-member briefing was held to provide information relating to the transformation proposal.

3. Pension Protections and Schemes

- **3.1 Please state whether the council has formally requested or required the incoming PVI operators to secure Admitted Body Status (ABS) to allow transferring staff to remain active members of the Local Government Pension Scheme (LGPS).**

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Within the interested provider application form we asked the question 'Do you have a comparable pension scheme or admitted body status?' we stated along with this question '

'Please note, you will be required to have admitted body status to South Yorkshire Pensions Authority if you plan to go ahead.'

It was later determined that based on legal and SYPA advice the provider would not be granted admitted body status, nor could they be required to and that a reasonable alternative scheme was the required pension standard.

- **3.2 If Admitted Body Status is not a mandatory requirement of this contract, please provide a copy of the Government Actuary's Department (GAD) certificate confirming that the alternative pension scheme being offered (e.g., the NEST scheme) is "broadly comparable" to the LGPS.**

Legal advice confirms that the Council is not entering into a contract or commissioning a service with the provider and therefore there is no contract for services which can require a broadly comparable pension scheme and therefore we have not sought a Government Actuary Certificate.

- **3.3 Please provide any actuarial assessments or financial calculations held by the council comparing the value of the current LGPS benefits against the proposed basic NEST scheme benefits for the affected workforce.**

No such documents are available.

4. TUPE and Impact Assessments

- **4.1 Please provide the workforce data held by the council detailing the exact number of staff members subject to a TUPE transfer as a result of this nursery privatization strategy.**

The exact number of employees affected by the nursery transfer to an alternative provider as of 3 August 2026 is 34.

- **4.2 Please provide a copy of the full Equality Impact Assessment (EIA) and any workforce risk assessments completed in relation to this transfer, specifically focusing on the financial and equality impacts of moving staff from a Defined Benefit pension (LGPS) to a basic Defined Contribution scheme (NEST).**

Please see attached consideration of an EIA in the MTFBS Budget Paper.

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If you have any queries about this letter, please contact Information Requests Via email.

Please remember to quote the reference number above in any future communications.

If you are unhappy with the way the Directorate has handled your request, you may ask for an internal review. Please clearly mark your correspondence 'Complaint' and address it to:

Barnsley MBC
Information Requests Team
PO Box 634
Barnsley
S70 9GG
email: informationrequests@barnsley.gov.uk

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: -

Customer Services Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Email: <http://www.ico.org.uk/foicomplaints>

Kind regards,

Information Requests Team, Barnsley MBC

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