

Notice of Meeting

Cabinet Member for Education and Learning Decisions



Date and Time

Tuesday, 25 July
2023
11.00 am

Place

Committee Room
Woodhatch Place
11 Cockshot Hill,
Reigate
Surrey
RH2 8EF


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Cabinet Member for Education and Learning:
Clare Curran

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AGENDA

1 DECLARATIONS OF INTEREST

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter

- i. Any disclosable pecuniary interests and / or
- ii. Other interests arising under the Code of Conduct in respect of any item(s) of business being considered at this meeting

NOTES:

- Members are reminded that they must not participate in any item where they have a disclosable pecuniary interest
- As well as an interest of the Member, this includes any interest, of which the Member is aware, that relates to the Member's spouse or civil partner (or any person with whom the Member is living as a spouse or civil partner)
- Members with a significant personal interest may participate in the discussion and vote on that matter unless that interest could be reasonably regarded as prejudicial.

2 PROCEDURAL MATTERS

a MEMBERS' QUESTIONS

The deadline for Members' questions is 12pm four working days before the meeting (19/07/2023).

b PUBLIC QUESTIONS

The deadline for public questions is seven days before the meeting (18/07/2023).

c PETITIONS

The deadline for petitions was 14 days before the meeting, and no petitions have been received.

3 FAIR ACCESS PROTOCOL 2023-2024

(Pages
5 - 32)

Each local authority must have a Fair Access Protocol in place and all schools in a local authority area must participate in it. The Fair Access Protocol ensures that vulnerable and unplaced children, who are not successful in gaining a place through the normal in-year admissions process, are offered a place at a suitable school within 20 school days. This includes admitting children above the published admission number to schools that are already full.

The proposed Fair Access Protocol for 2023/24 sets out the criteria that the local authority will use to determine which children will be placed under Surrey's Fair Access Protocol and how cases will be considered. It complies with the DfE's School Admissions Code ("the Code") which came into force on 1 September 2021 and with the DfE guidance on fair access that was issued in July 2021 alongside the new Code.

4 SCHOOLS LICENSE DEFICIT REQUEST

(Pages
33 - 40)

This report provides summary details of Surrey maintained schools' total balances and the council's Dedicated Schools Grant balances at 31 March 2023; and seeks Cabinet Member approval for one school that is projecting a deficit in excess of 5% of their budget share at 31 March 2024.

Joanna Killian
Chief Executive
Published: 17 July 2023

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QUESTIONS AND PETITIONS

Cabinet and most committees will consider questions by elected Surrey County Council Members and questions and petitions from members of the public who are electors in the Surrey County Council area.

Please note the following regarding questions from the public:

1. Members of the public can submit one written question to a meeting by the deadline stated in the agenda. Questions should relate to general policy and not to detail. Questions are asked and answered in public and cannot relate to “confidential” or “exempt” matters (for example, personal or financial details of an individual); for further advice please contact the committee manager listed on the front page of an agenda.
2. The number of public questions which can be asked at a meeting may not exceed six. Questions which are received after the first six will be held over to the following meeting or dealt with in writing at the Chairman’s discretion.
3. Questions will be taken in the order in which they are received.
4. Questions will be asked and answered without discussion. The Chairman or Cabinet members may decline to answer a question, provide a written reply or nominate another Member to answer the question.
5. Following the initial reply, one supplementary question may be asked by the questioner. The Chairman or Cabinet members may decline to answer a supplementary question.

SURREY COUNTY COUNCIL

CABINET MEMBER FOR EDUCATION AND LEARNING

DATE: 25 JULY 2023

**REPORT OF CABINET MEMBER: CLARE CURRAN, CABINET MEMBER
FOR EDUCATION AND LEARNING**

**LEAD OFFICER: LIZ MILLS, DIRECTOR FOR EDUCATION AND
LIFELONG LEARNING**

SUBJECT: FAIR ACCESS PROTOCOL 2023/24

**ORGANISATION STRATEGY PRIORITY AREA: EMPOWERING
COMMUNITIES**



SUMMARY OF ISSUE:

Each local authority must have a Fair Access Protocol in place and all schools in a local authority area must participate in it. The Fair Access Protocol ensures that vulnerable and unplaced children, who are not successful in gaining a place through the normal in-year admissions process, are offered a place at a suitable school within 20 school days. This includes admitting children above the published admission number to schools that are already full.

The proposed Fair Access Protocol for 2023/24 sets out the criteria that the local authority will use to determine which children will be placed under Surrey's Fair Access Protocol and how cases will be considered. It complies with the DfE's School Admissions Code ("the Code") which came into force on 1 September 2021 and with the DfE guidance on fair access that was issued in July 2021 alongside the new Code.

RECOMMENDATIONS:

It is recommended that the Cabinet Member agrees the proposed Fair Access Protocol for 2023/24.

REASON FOR RECOMMENDATIONS:

- The local authority is required to have a Fair Access Protocol ("the Protocol") in place that all schools must participate in.
- The proposed Protocol meets the requirements of the 2021 DfE School Admissions Code and supporting guidance.
- The Protocol will ensure that vulnerable and unplaced children can be placed in school quickly where they are unable to secure a place through the normal in-year admissions procedure.
- When seeking to place a child under the Protocol, no school will be asked to take a disproportionate number of children who have been

permanently excluded from other schools, who display challenging behaviour, or who meet one of the other categories set out in the Protocol.

DETAILS:

1. A copy of the proposed Fair Access Protocol for 2023/24 is attached as Annex 1.
2. The Protocol complies with the statutory requirements of the Code.
3. Surrey's Fair Access Protocol acts as a legal framework behind the operation of fair access. The Protocol has generally worked well, with 165 children to date being referred under the Protocol in 2022/23 (22 primary and 143 secondary). Of these, 35 children were placed in a school directly by the School Admissions team; 33 children were placed through agreement by schools via email instead of needing to hold a panel; and 93 children were placed in school via a fair access panel. At the time of writing, 4 referrals are awaiting placement.
4. Of the 165 referrals to date, 105 referrals (64%) were under category L: children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. 49 referrals (30%) were under category D: children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education.
5. There has been a significant increase in the number of children referred under fair access in 2022/23 – 165 children to date, compared to 80 in the whole of 2021/22. This is largely attributable to the rise in referrals under category L as a result of increased pressure for places in certain areas of Surrey and in certain year groups.
6. No changes are proposed to the Fair Access Protocol for 2023/24, other than dates have been updated from 2022/23.
7. The requirements of the 2021 Code mean that there is little scope to make changes each year to Surrey's Protocol as statutory elements cannot be altered.
8. Schools and Surrey professionals are familiar with the requirements of Surrey's Protocol, although some schools have more exposure to fair access than others, especially at primary level.
9. Surrey's Fair Access Review Group continues to examine the operational effectiveness of the Protocol during each academic year. The Review Group consists of representatives from primary and secondary schools, Pupil Referral Units, local authority Education & Inclusion Service Managers, Area Inclusion Managers and Surrey's School Admissions team. The Assistant Directors are copied into all agendas and meeting

notes and are represented at the Review Group through their service managers. It is intended to review the effectiveness and membership of this group to ensure it continues to add value to the Fair Access process.

10. The Review Group did not identify any specific changes needed to the Protocol for 2023/24 within those areas that could lawfully be changed.
11. The Review Group proposed that the Protocol should only be consulted on with schools biennially in future unless changes were being proposed, to avoid unnecessary consultation on an unchanged Protocol (other than the annual updating of dates). This would mean that the next consultation would take place in 2025 for the 2025/26 Protocol unless changes were proposed for the 2024/25 Protocol. It would still however be intended to seek Cabinet Member approval of the Protocol each year.

CONSULTATION:

12. The draft Protocol for 2023/24 was distributed for consultation on 11 May 2023 via the Schools Bulletin (issue 396) by the School Admissions team. This went to all schools and Pupil Referral Units. Primary and Secondary Phase Councils, the Education and Inclusion Service Managers and the Area Inclusion Managers were also consulted.
13. Consultees were asked the following questions:
 - Q1: Surrey's Fair Access Protocol was updated for 2021/22 to meet the requirements of the new DfE School Admissions Code (September 2021) and the updated DfE guidance on fair access (July 2021). Taking into account that statutory elements of Surrey's Fair Access Protocol cannot be changed, are you in agreement with the wording of the proposed Protocol for 2023/24?
 - Q2: For those sections of Surrey's Fair Access Protocol that could potentially be updated, is there anything you wish to see changed, and why if so?
 - Q3: Since Surrey's Fair Access Protocol must reflect the DfE School Admissions Code, and the DfE guidance on fair access is now clearer, we are proposing to consult on the Protocol every two years instead of annually, unless changes are being proposed. Are you in agreement with this?
 - Q4: Do you have any other comments to make about Surrey's Fair Access Protocol?
14. The closing date for the consultation was 26 May 2023. The School Admissions team received two responses, from a primary and a secondary Headteacher. They were both in agreement with the proposed Protocol and the proposal to consult every two years unless changes were proposed, and the respondents did not make any further comments.

RISK MANAGEMENT AND IMPLICATIONS:

15. The Fair Access Protocol reduces the risk of children being left out of school by ensuring there is a shared responsibility between the local authority and schools to place a child in school within 20 school days where they have been unable to secure a place through the normal in-year admissions process.
16. Once placed in a school, the Protocol ensures that children will be placed on roll as soon as possible, but within no more than five school days, to ensure that no child remains out of school for longer than necessary.
17. The Protocol reduces the risk of undersubscribed schools being asked to admit more than their fair share of children who need to be placed under the Protocol.

Financial and value for money implications:

18. Funding remains available to schools in 2023/24 when admitting pupils permanently excluded from their previous school, dependent on the date of the exclusion and the school that the child had previously been permanently excluded from. The basis of this funding is specified by the DfE and it is generally funded from sums recovered from the excluding school.
19. In addition, maintained schools and academies will continue to receive Age Weighted Pupil Unit (AWPU) funding for Year 11 pupils placed on roll after 05 October 2023 and before the end of the spring term 2023 under categories D and J of the Protocol (but not previously permanently excluded), on a pro rata basis. Late Year 11 placements are particularly problematic because schools will not ordinarily receive funding at any stage because this cohort will have left the school by the next October census date. It is hoped that by schools continuing to receive AWPU funding, it will offer some incentive to schools to admit Year 11 children. The cost of this funding has been negligible in recent years as few Year 11 pupils coming under categories D and J are placed under the Protocol.
20. The Fair Access Protocol is important in ensuring timely placement of vulnerable pupils in mainstream schools when that is appropriate. It is recognised that inclusion in mainstream schools is generally the best option for the child, as well as the most cost-effective solution for the Council.
21. The cost of payments to schools admitting Year 11 pupils under the Fair Access Protocol is already provided for within the high needs block (HNB) of the Dedicated Schools Grant. As part of the Council's 'safety valve' agreement, there is an overall need to manage costs and reduce the operating deficit. Continuation of payments for Year 11 pupils supports inclusion of these pupils and may avoid incurring much higher costs for

alternative placements elsewhere and should continue but needs to be kept under review in the overall context of the HNB.

Section 151 Officer commentary:

22. Significant progress has been made in recent years to improve the Council's financial resilience and the financial management capabilities across the organisation. Whilst this has built a stronger financial base from which to deliver our services, the increased cost of living, global financial uncertainty, high inflation and government policy changes mean we continue to face challenges to our financial position. This requires an increased focus on financial management to protect service delivery, a continuation of the need to be forward looking in the medium term, as well as the delivery of the efficiencies to achieve a balanced budget position each year.
23. In addition to these immediate challenges, the medium-term financial outlook beyond 2023/24 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority, in order to ensure the stable provision of services in the medium term.
24. The Section 151 Officer therefore supports the proposal to approve the fair access protocol.

Legal implications – Monitoring Officer:

25. The 2021 DfE School Admissions Code requires local authorities to have a Fair Access Protocol in place to ensure that education can be secured quickly for children who have no school place and that all schools in an area admit their fair share of children with challenging behaviour under the Protocol, including children excluded from other schools.
26. The proposed Fair Access Protocol reflects the requirements of the 2021 DfE School Admissions Code and is legally compliant.

Public sector equality duty:

27. The public sector equality duty (Section 149 of the Equality Act 2010) applies to the decision to be made by the Cabinet Member in this report. There is a requirement when deciding upon the recommendations to have due regard to the need to advance equality of opportunity for people with protected characteristics, foster good relations between such groups and eliminate any unlawful discrimination. These matters are dealt with in the equalities paragraphs of the report and in the attached Equalities Impact Assessment (EIA).

Consultation:

28. There is a clear expectation in public law that the Council should carry out a consultation process whenever it is considering making significant changes to service provision. Whilst no changes have been proposed for the 2023/24 Protocol, schools have nonetheless been consulted on the draft Protocol and invited to make comments if they wish, although only two were received.

General Decision-Making:

29. In coming to a decision on this issue, the Cabinet Member needs to take account of all relevant matters. The weight to be given to each of the relevant matters is for the Cabinet Member to decide. Relevant matters in this context will include the statutory requirements, the policy considerations, the impacts of the options on service provision, the Medium-Term Financial Plan (MTFP), the Council's fiduciary duty, any relevant risks and the public sector equality duty.

Best value duty:

30. The best value duty is contained in section 3 of the Local Government Act 1999 as a result of which the Council is under a duty to make arrangements to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The relevant guidance states that Councils should consider overall value, including economic, environmental and social value when reviewing service provision.

Equalities and diversity:

31. An Equality Impact Assessment has been completed and is included in Annex 2.
32. There are no negative impacts on any equality group. Placements under the Fair Access Protocol are currently in the region of 165 a year, and as such this Protocol will not affect many people nor have a severe effect on some people.
33. The Fair Access Protocol is designed to ensure that children who are out of school are placed in school quickly. This will ensure that the equality groups identified in the EIA will face a positive impact as a result of this Protocol as they will be placed in school quickly, even if a school is full.

Other implications:

34. The potential implications for the following Council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

Area assessed:	Direct Implications:
Corporate Parenting/Looked After Children	Set out below
Safeguarding responsibilities for vulnerable children and adults	Set out below
Environmental sustainability	No significant implications arising from this report
Public Health	No significant implications arising from this report

Corporate Parenting/Looked After Children implications:

35. Looked After Children are placed in accordance with Surrey's Protocol for the Processing of In Year Admissions for Children in Care, and thus they are not normally considered under Surrey's Fair Access Protocol.

Safeguarding responsibilities for vulnerable children and adults implications:

36. The Fair Access Protocol provides for vulnerable or challenging children who are out of school to be placed in school quickly and this contributes to Surrey's safeguarding responsibilities for vulnerable children.

WHAT HAPPENS NEXT:

37. The Protocol will be shared with all schools and relevant officers and implemented for 2023/24.

38. The Fair Access Review Group will monitor the effectiveness of the Protocol throughout the year.

Contact Officer:

Claire Potier, Service Manager, School Admissions
claire.potier@surreycc.gov.uk

Consulted:

- Liz Mills, Director for Education & Lifelong Learning
- Carrie Trail, Head of Education
- Amanda Scally, Legal and Democratic Services
- David Green, Strategic Finance - Children, Families and Learning
- Education & Inclusion Service Managers
- Area Inclusion Managers
- All primary and secondary schools and PRUs
- Primary and Secondary Phase Councils
- Fair Access Review Group

Annexes:

Annex 1 – 2023/24 Fair Access Protocol

Annex 2 – Equalities Impact Assessment

Sources/background papers:

- DfE School Admissions Code - September 2021
 - DfE Fair Access Protocols Guidance - July 2021
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Fair Access Protocol

2023/24



Surrey's Fair Access Protocol 2023/24

1. Introduction

- 1.1 This document sets out the Fair Access Protocol which will be operated by Surrey in partnership with all state funded mainstream schools during the academic year 2023/24.
- 1.2 This Protocol applies to children living in Surrey and complies with the requirements of the 2021 School Admissions Code (the Code) and the DfE guidance on Fair Access Protocols issued in July 2021.
- 1.3 Roles and responsibilities of stakeholders involved in the fair access process are set out in Appendix 1.

2. Background

- 2.1 Paragraph 3.14 of the Code confirms that each local authority **must** have a Fair Access Protocol to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible.
- 2.2 Paragraph 3.15 of the Code confirms that the Protocol **must** be consulted upon and developed in partnership with all schools in its area. Once the Protocol has been agreed by the majority of schools in its area, all admission authorities **must** participate in it.
- 2.3 Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full. Failure by a school to engage in the Protocol will not prevent a child being placed at that school.

3. Legal principles of the Code in relation to Fair Access

- 3.1 Fair Access Protocols only apply to children who are applying for a place in year and not those who are applying for a place as part of the normal admissions round.
- 3.2 The majority of children applying in year will be admitted to a school through each school's in year admission procedures. However, this Protocol will be triggered when a child is refused admission through the in-year process and is identified as falling within one of the criteria set out within paragraph 5.2 of this Protocol.
- 3.3 For children applying for a place at a school in the normal year of entry (i.e. where a PAN exists for entry into that year group - normally Reception, Year 3 or Year 7), admission can only be refused in year if:
 - the PAN has been reached; or
 - the child has been permanently excluded from two or more schools and the last exclusion was within the last two years - paragraph 3.8 of the Code sets out the limited exceptions to this rule.
- 3.4 For children applying for a place at a school for a year group that is **not** the normal year of entry, admission can only be refused in year if:

- the child has been permanently excluded from two or more schools and the last exclusion was within the last two years - paragraph 3.8 of the Code sets out the limited exceptions to this rule; or
 - the school is full and can argue prejudice; or
 - the school is undersubscribed but can argue prejudice on the basis of the child having challenging behaviour (in accordance with the definition set out in paragraph 3.5 of this Protocol) and otherwise meets the conditions set out in paragraph 3.8 of this Protocol.
- 3.5 The Code defines challenging behaviour as ‘where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour **or** it is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate. We would expect this behaviour to significantly interfere with the pupil’s/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment.
- 3.6 The following reasons **on their own** should not be grounds for considering that a child may display challenging behaviour:
- poor attendance elsewhere;
 - a defined number of suspensions, without consideration of the grounds on which they were made;
 - special educational needs; or
 - having a disability.
- 3.7 A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. All schools have a duty to make reasonable adjustments for students with disabilities. Schools should be aware that a child who displays challenging behaviour may do so as a result of their disability or any unmet needs. Schools must therefore consider whether any reasonable adjustments can be put in place to support the needs of a particular child when considering whether admission should be refused on these grounds.
- 3.8 Where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour, it may refuse admission and refer the child for placement through this Protocol, **only if**:
- the school has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools; and
 - it believes that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.
- 3.9 An admission authority must not refuse to admit a child to a school solely on the basis that they would be, or they believe they would be, eligible to be placed via this Protocol.
- 3.10 An admission authority must not refuse to admit a child solely because information has not been received from their previous school.
- 3.11 The provision to refuse a child on the basis of challenging behaviour cannot be used to refuse admission to looked after children, previously looked after children or children who have an Education, Health and Care Plan naming the school in question.
- 3.12 Admission authorities must also not refuse to admit a child thought to be potentially disruptive or likely to exhibit challenging behaviour on the grounds that the child is first to be assessed for special educational needs.

- 3.13 This Protocol can only be used to place children who fall within one of the groups set out in paragraph 5.2 of this Protocol where it can be demonstrated that reasonable measures have been taken to secure a place through the in-year procedures. In accordance with the Code, this might be where an application has been made to at least one school and this has been refused or where the local authority has confirmed that there are no places available at any school within a reasonable distance.
- 3.14 Eligibility for this Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities must process these applications in accordance with their usual in-year admission procedures and they must not refuse to admit such children on the basis that they may be eligible to be placed via this Protocol.
- 3.15 Parents continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via this Protocol.
- 3.16 There is no duty to comply with parental preference when allocating a place through this Protocol, but parents' views should be taken into account.
- 3.17 This Protocol will seek to place a child in a school that is appropriate to any particular needs they may have and will not require a school to automatically admit a child in place of a child permanently excluded from the school.
- 3.18 Where it has been agreed that a child will be considered under this Protocol, a school place must be allocated for that child within 20 school days. Once they have been allocated a school place via this Protocol, arrangements will be made for the child to start at the school as soon as possible.
- 3.19 Admission authorities must admit children when asked to do so in accordance with this Protocol.
- 3.20 When seeking to place a child under this Protocol, no school - including those with available places - will be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who meet one of the other categories set out in paragraph 5.2 of this Protocol.

4. Additional principles of Surrey's Fair Access Protocol

- 4.1 Whilst this Protocol provides for the most vulnerable children to be admitted to school quickly, unnecessary transfers between schools are strongly discouraged. Schools are expected to work with children and their families/carers to prevent unnecessary transfers between schools.
- 4.2 Surrey works together with schools to reduce and prevent permanent exclusion. Managed moves which may be arranged between schools before a child reaches the point of permanent exclusion will not qualify as a placement under this Protocol.
- 4.3 Admission authorities will not cite oversubscription as a reason for not admitting a child when seeking to place a child under this Protocol, unless an extra child would breach the Infant Class Size Regulations and the child to be admitted could not be treated as an excepted child (see Appendix 2 for cases that might be considered as an exception to Infant Class Size legislation for applications for KS1).

- 4.4 Children placed under this Protocol will be given priority for admission over others on a waiting list.
- 4.5 Where a child leaves a school for home education, the outgoing school will notify their allocated Inclusion Officer who will offer a home visit to the family (within 10 days of the deregistration) before the child is registered as receiving home education. The intention is to prevent unnecessary or inappropriate departures from a school and to avoid the family seeking admission to another school shortly afterwards that may result in a referral under this Protocol.

5. Categories of children

- 5.1 In order to be placed under this Protocol a child must meet the following criteria:
- live in Surrey; and
 - have a legal right to access state funded education; and
 - be seeking a place outside the normal admissions round; and
 - be of statutory school age.
- 5.2 This Protocol will **only** be used to place children who fall within one of the following groups where they have been refused a school place in accordance with paragraphs 3.3 and 3.4 of this Protocol and where it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedure. As per section 10, Looked After Children are outside the remit of this Protocol, so these categories do not apply to them.
- a) children either subject to a Child in Need Plan or a Child Protection Plan or having had one of these within 12 months at the point of being referred to this Protocol;
 - b) children living in a refuge or in other Relevant Accommodation at the point of being referred to this Protocol;
 - c) children from the criminal justice system;
 - d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
 - e) children with special educational needs (but without an Education, Health & Care Plan), disabilities or medical conditions;
 - f) children who are carers;
 - g) children who are homeless;
 - h) children in formal kinship care arrangements (as evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order);
 - i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
 - j) children who have been refused a school place on the grounds of their challenging behaviour and referred on the basis of paragraph 3.8 of this Protocol;
 - k) children for whom a place has not been sought due to exceptional circumstances. It is for the local authority to decide whether a child qualifies to be placed under this category, based on the circumstances of the case;
 - l) children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable

distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted;

- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

6. Identification of children who meet the criteria for placement under this Protocol

- 6.1 Most children will come to the attention of the School Admissions team or the school as part of the in-year admission application process.
- 6.2 Where an application form is received by either the School Admissions team or an own admission authority school, the application will be processed in accordance with in-year procedures. A place can only be refused in year for the reasons set out in paragraphs 3.3 and 3.4 of this Protocol.
- 6.3 If a place is refused, the School Admissions team or the school will advise the parent that they are unable to offer a place, setting out the reasons and informing them of their right of appeal, within no more than 15 school days of the application being received.
- 6.4 Where the school is making the refusal, they must let the School Admissions team know that they are unable to offer a place, the reason for the refusal and indicating if they believe the child meets the criteria for placement under this Protocol.
- 6.5 Where refusal is on the basis of challenging behaviour, the School Admissions team will liaise with the Area Inclusion Manager to ensure the conditions for refusal and referral under this Protocol have been met, in accordance with paragraphs 3.3 to 3.8 of this Protocol.
- 6.6 Most children who are permanently excluded from a Surrey school and those who are ready for reintegration to a mainstream school from a Surrey Pupil Referral Unit (PRU) or other alternative provision will be identified by the Area Inclusion Manager / Head of PRU. The Area Inclusion Manager / Head of PRU will consider whether a managed placement might be arranged directly with a school or whether the child should be referred for placement under this Protocol. Where it is decided that a placement should be secured under this Protocol, the Area Inclusion Manager will refer the details to the School Admissions team.

7. Process for agreeing a placement

- 7.1 Once it has been agreed that a child will be considered under this Protocol, a school place must be allocated within 20 school days.
- 7.2 A senior manager within the School Admissions team will consider each case, liaising with the Area Inclusion Manager as appropriate, and will decide whether it is appropriate to refer the case directly to a school for placement or whether the circumstances of the case warrant discussion at a placement panel. Generally, children who meet categories d) and j) within paragraph 5.2 of this Protocol will be referred to a panel for placement. However, children falling within one of the other categories will generally be referred directly to a school for placement.

Direct placements

- 7.3 Where it is agreed that the case will be referred directly to a school, the School Admissions team will agree the school(s) to be approached, liaising with the Area Inclusion Manager as appropriate, and will make the referral with the reasons and details of the case.
- 7.4 The following will be taken into account when deciding which school(s) to approach:
- parental preference (the parent/carer can still submit an appeal and so it is helpful to demonstrate that this has been considered);
 - whether a school is in special measures, has recently come out of them or is otherwise assessed by the local authority as needing support;
 - whether a school has a particularly high proportion of children with challenging behaviour or previously excluded children;
 - the number and percentage of LAC and EHCP children within each school and number of children already admitted to a school under this Protocol to each year group;
 - any genuine concerns about the admission by either the parent/carer;
 - a strong view of the parent/carer about the religious ethos of a school;
 - which schools are nearest by road and straight line, availability of transport and travelling times;
 - which schools have vacancies;
 - the needs of the child;
 - any previous schools attended, especially if the child was removed from school for elective home education and the child is returning to the same phase of education.
- 7.5 Schools will be given five school days to put forward any concerns and, if no school has indicated their willingness to admit within that time, the School Admissions team will decide on the placement.
- 7.6 The placement will be confirmed within 20 school days of the original fair access referral and the School Admissions team will send notification to the parent/carer. A copy will also be sent to the school and the Area Inclusion Manager, who in turn will share it with the attached Inclusion Officer.

Placement panels

- 7.7 Where a child meets categories d) and j) within paragraph 5.2 of this Protocol or where it is considered that the circumstances of the case otherwise warrant placement at panel, the School Admissions team will provide schools with reasonable notice and information as to how and when discussions around the placement of the child will take place, making sure the timetable will allow a decision to be made within 20 school days of the referral.
- 7.8 In considering which schools to invite to a panel meeting under this Protocol, the School Admissions team will take account of the child's school history, where the child lives and the circumstances of the case.
- 7.9 The most suitable school for many children is likely to be a school that is close to the child's home. Advantages of inviting schools close to the child's home address are as follows:
- there are likely to be less transport issues or costs;
 - if the school is nearer there are likely to be fewer barriers which prevent the child from attending;
 - there may be better parental support and participation;
 - the child will be better placed to participate in extracurricular activities;

- the child is more likely to develop friendship groups from his/her local community;
- it is less likely that appeals for other schools will be upheld;
- it establishes a clear and transparent way for referrals to be made.

- 7.10 However there are also advantages of inviting schools in the area where the child was previously at school, and such placements can lead to a more informed and considered process which in turn can lead to a successful and supported placement:
- the previous school can comment on the child's behavioural and educational history at the panel;
 - support services may already be familiar and be supporting the child;
 - it ensures collegiate working between schools in the same area which in turn improves shared approaches to managing behaviour and attendance;
 - it establishes a culture of shared problem solving of individual cases within the same area;
 - schools can challenge the poor practice of other schools within the same area and this may in turn reduce the number of hard to place cases;
 - it can encourage collaborative working between schools.
- 7.11 Paperwork in relation to the cases to be considered at panel will be distributed no later than five days before the panel meeting.
- 7.12 A representative from the School Admissions team, the Area Inclusion Manager and a representative from the PRU, as appropriate, will attend the panel at which placement decisions are to be taken. Other representatives will be invited as appropriate.
- 7.13 Panels are expected to consider the case of each child and to agree a placement at the most suitable school within the area of the panel.
- 7.14 For own admission authority schools, the delegated representative at the panel will not need to seek prior or subsequent authorisation from their governing body to admit a fair access child. This is because when a child is placed in accordance with this Protocol, the admission authority for that school should admit the child.
- 7.15 In considering cases, panels will have regard to:
- parental preference (the parent/carer can still submit an appeal and so it is helpful to demonstrate that this has been considered);
 - whether a school is in special measures, has recently come out of them or is otherwise assessed by the local authority as needing support;
 - whether a school has a particularly high proportion of children with challenging behaviour or previously excluded children;
 - the number and percentage of LAC and EHCP children within each school and the number of children already admitted to a school under this Protocol to each year group;
 - any genuine concerns about the admission by either the parent/carer or the school;
 - a strong view of the parent/carer about the religious ethos of a school;
 - distance, availability of transport and travelling times;
 - which schools have vacancies;
 - the needs of the child;
 - any previous schools attended, especially if the child was removed from school for elective home education and the child is returning to the same phase of education.

- 7.16 Once a placement decision is made at panel, the School Admissions team will send notification to the parent/carer within 20 school days of the original fair access referral. A copy will also be sent to the school and the Area Inclusion Manager, who in turn will share it with the attached Inclusion Officer.
- 7.17 More information on the expectation of panels is set out in Appendix 3.

Arrangements for placing on roll

- 7.18 The receiving school will contact the parent/carer and make arrangements for the child to go on roll as soon as possible, but no later than five school days of the placement being agreed and for a start date no later than five school days of going on roll.
- 7.19 Where a placement is from a Surrey PRU or alternative provision, the child should be removed from that school roll and should not be dual registered.
- 7.20 Support for the admission process may be available from the attached Inclusion Officer. If required, where the child was previously open to Access to Education (A2E), reintegration support may also be available from the A2E team for the child's first two weeks in school.
- 7.21 Placing on roll should not be subject to a meeting with the parent/carer, although a meeting might be arranged to discuss a start date and to discuss the child's integration to the school.

Mitigation where placements cannot be agreed

- 7.22 In the unlikely event of a child not being placed through this Protocol, the School Admissions team will identify a school in liaison with the Education and Inclusion Service Manager or their delegated representative. In such circumstances, the school identified must admit the child without delay. In the event of the identified school refusing to admit the child, the School Admissions team will follow due process in order to instruct a community or voluntary controlled school or to direct an own admission authority school to admit the child, including making a referral to the Secretary of State in relation to academies.

8. Monitoring of placements

- 8.1 The School Admissions team will monitor each placement to ensure that the child is placed on roll and the satisfactory completion of 12 weeks.
- 8.2 A child will not be counted as having been placed under this Protocol for a particular school if the placement breaks down within 12 school weeks of the child's start date and the child is taken off roll at that school. The reintegration of children returning to mainstream school from a PRU may be managed over a period longer than 12 weeks, at the decision of the Area Inclusion Manager.
- 8.3 A placement will be considered to have broken down within 12 weeks if the child's behaviour would ordinarily warrant permanent exclusion. In such cases the Area Inclusion Manager will determine whether or not the placement should be considered to have broken down. Where a placement is considered to have broken down, the Area Inclusion Manager will work with the school to identify a solution which might include the school referring the child for alternative provision or placement at an alternative school.
- 8.4 Once on roll any attendance issues should be dealt with as appropriate through the school's attached Inclusion Officer.

- 8.5 Under no circumstances will a school ask a parent/carer to withdraw a child from the school's roll. If a school continues to face difficulty with a child who is on their roll, such as through poor attendance or challenging behaviour, they will seek support from the Area Inclusion Manager or the Area Lead for Specialist Teachers for Inclusive Practice (STIPS) in the first instance.
- 8.6 If information comes to light which indicates that a school has taken a child off roll inappropriately or has not sought appropriate support for a child whilst they were on roll, the School Admissions team will refer that information to the Area Inclusion Manager who will liaise with the school as appropriate.

9. Children with an Education, Health & Care Plan

- 9.1 Children with an Education, Health & Care Plan (EHCP) are outside the remit of this Protocol as these children are placed in accordance with the SEND Code of Practice.
- 9.2 However children who are awaiting an EHCP will continue to be considered under normal admissions processes, including this Protocol as appropriate, until their EHCP is agreed.
- 9.3 This Protocol does not replace the process for assessing the specialist needs of a child and putting in place appropriate provision.

10. Looked After Children

- 10.1 Looked After Children are children who are in the care of the local authority as defined by Section 22 of the Children Act 1989.
- 10.2 Looked After Children are placed in accordance with Surrey's Protocol for the Processing of in year admissions for Children in Care and are outside the remit of this Protocol. This includes unaccompanied asylum seeking children.

11. Out of area applications

- 11.1 Occasionally applications will be received from children who live outside Surrey but who otherwise meet the criteria for placement under this Protocol.
- 11.2 As these children do not meet the criteria for placement under this Protocol, schools should consider these applications in accordance with normal in year processes
- 11.3 However, if the child falls within a category of fair access as set out in paragraph 5.2 of this Protocol and the preferred school is unable to offer a place, the application will be referred back to the child's home local authority to effect an alternative placement.

12. Funding

- 12.1 Surrey fair access children admitted into Year 11 at a state funded mainstream school under categories d) and j) of this Protocol (but not previously permanently excluded) after 5 October 2023 but before the end of the spring term 2024, and who do not already qualify for part year Age Weighted Pupil Unit (AWPU) funding, will receive pro rata AWPU funding from the date of their admission to the end of August 2024, provided that the placement has lasted for four

weeks or more. The School Admissions team will validate this and will inform the Schools Funding team accordingly so that funding can be provided.

Payment will only be made once the placement has lasted four weeks or more, in line with the following timescales:

- placements made in the autumn term which have lasted four weeks or more by the end of that term - payment will be issued in January 2024;
- placements made up to the end of March 2024 which have lasted four weeks or more by that date - payment will be issued at the end of March 2024;
- remaining payments will be made in the summer term 2024.

In all cases a proportion of the funding will be reclaimed if the child subsequently leaves the school.

12.2 Permanently excluded children admitted to mainstream schools under this Protocol will be funded as follows:

- a) When a child is permanently excluded from a school at any time in the local authority's financial year, the school's budget is reduced by the annual value of pupil led funding attracted by a pupil of the same age and characteristics multiplied by $1/52$ x the number of weeks from the date of permanent exclusion to the end of the local authority's financial year (except for Year 2s excluded from an infant school during the summer term; Year 6s excluded from a junior or primary school during the summer term; or Year 11s excluded during the summer term for which a separate calculation applies).
- b) Where a previously permanently excluded child is admitted to another school, the receiving school's budget is increased by the annual value of pupil led funding for a pupil of the same age and characteristics multiplied by $1/52$ x the number of weeks from the date of re-admission to the end of the local authority's financial year (except for Year 2s excluded from an infant school during the summer term; Year 6s excluded from a junior or primary school during the summer term; or Year 11s excluded during the summer term for which a separate calculation applies).
- c) Pupil led funding includes the basic entitlement rate; plus deprivation, low prior attainment and EAL funding where the pupil is eligible for such funding. A further adjustment is made where the pupil generated pupil premium for the school.

12.3 Panels are expected to take into account the distance and journey times when considering the most suitable placement. Subject to the maximum walking distance appropriate to the child's age being breached, transport will normally be arranged for the most appropriate public transport route. Where there are other suitable modes of transport but a taxi is deemed appropriate to support integration, this will normally only be funded for one term, and beyond that the child would be expected to travel on an alternative mode of transport to school. Where there are exceptional circumstances the parent/carer could request that the taxi provision is extended, and this would be considered as a transport case review by a senior officer in Surrey's [School Travel & Assessment Team](#).

12.4 Funding arrangements within this Protocol will be reviewed subject to the outcomes of any changes to the funding of schools by the Department for Education or decisions made by Schools Forum to vary funding to schools.

13. Data and reporting

- 13.1 A log of all placements made through this Protocol will be maintained by the School Admissions team and reported to schools.
- 13.2 As part of its annual report to the Office of the Schools Adjudicator, Surrey is required to report on the effectiveness of this Protocol, including how many children have been admitted to each type of school. Under the 2021 Code, Surrey's annual report must be produced by 31 October each year and must be published locally.

14. Review of the Fair Access Protocol

- 14.1 This Protocol will be reviewed on an ongoing basis by the Fair Access Review Group, which consists of representatives from primary and secondary schools, Pupil Referral Units, Education & Inclusion Service Managers, Area Inclusion Managers and Surrey's School Admissions Team.
- 14.2 In the event that the majority of schools (more than 50%) can no longer support the principles and approach of this Protocol, they should initiate a review by writing to the Service Manager for School Admissions, setting out the aspects of the Protocol that they wish to be reviewed. Any review will be subject to the matter under dispute not being a statutory requirement.
- 14.4 In such circumstances, the existing Protocol will remain binding on all schools until a new one is adopted.

Appendix 1

Roles and responsibilities

1. School Admissions team:

- consider applications for an in-year place for community and voluntary controlled schools and admission authority schools that opt in to the service;
- where a place is refused under the in-year process, issue outcome letters to parents within a maximum of 15 school days advising them of their right of appeal;
- where a place is refused, identify if the child meets one of the fair access categories;
- receive and validate fair access referrals from own admission authority schools;
- liaise with the Area Inclusion Manager to validate refusals under challenging behaviour;
- notify parents that placement is being considered through the Fair Access Protocol;
- decide the most appropriate process for placement, liaising with the Area Inclusion Manager as appropriate;
- where a direct placement is deemed appropriate, allocate a school to the child in liaison with schools and the Area Inclusion Manager as appropriate, within 20 school days of the referral;
- where a panel placement is deemed appropriate, establish which schools should be invited, organise the date and refer the details to those schools within five days of the panel meeting, making sure the timetable will allow a decision to be made within 20 school days of the referral;
- send a representative to the panel meeting;
- send the outcome letter following confirmation of the placement, copying to the school and the Area Inclusion Manager;
- if a child is unplaced at panel, allocate a school to the child via a direction/Secretary of State referral if necessary;
- monitor each placement to ensure the child is placed on roll and completes 12 weeks on roll;
- maintain statistics on number of fair access placements agreed for each school per year group, in which category and whether the 12 week threshold is met;
- respond to FOI and subject access requests in relation to fair access and panel meetings.

2. Area Inclusion Manager:

- refer recently excluded children to a Pupil Referral Unit;
- consider whether a managed placement can be arranged with a school for a child in a Pupil Referral Unit or in alternative provision ready for mainstream reintegration, or whether the child needs to be placed via the Protocol;
- notify the School Admissions team when a child in a Pupil Referral Unit is ready to be placed in school via the Protocol, along with written information from the PRU on the child's progress;
- attend panel meetings as appropriate;
- provide data on the number and percentage of LAC and EHCP children within each school to the Admissions team and to panel meetings;
- where a placement breaks down, work with the school to identify an alternative solution;
- support the School Admissions team in validating refusals on the basis of challenging behaviour;
- benchmark data to establish which schools have a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and share that with the School Admissions team and at panel meetings.

3. **Access to Education (A2E):**

- provide reintegration support as appropriate to the incoming school.

4. **Pupil Referral Units (PRUs):**

- inform the Area Inclusion Manager of pupils in the PRU who are ready for reintegration into a mainstream school;
- receive referrals from the Area Inclusion Manager for recently excluded pupils;
- provide written information on the child's progress at the PRU to the Area Inclusion Manager;
- attend the area panels as appropriate;
- where possible, provide reintegration support to the incoming school.

5. **Schools:**

Own admission authority schools who manage their own in year admissions:

- consider applications for an in-year place;
- where a place is refused under the in-year process, issue outcome letters to parents within a maximum of 15 school days explaining the reason for refusal and advising them of their right of appeal;
- where a place is refused under the in-year process and the child meets one of the fair access categories, complete a Fair Access Referral Form within two school days and send to the School Admissions team setting out the reason for refusal and why the case meets fair access.

All schools:

- where a direct placement is being sought, respond within 5 school days to a request from the School Admissions team to admit a child, giving a full written explanation if unable to admit;
- where a school is invited to a panel, ensure the Headteacher or delegated colleague attends and has read all paperwork in advance;
- contribute to decision making at panels to maintain an equitable distribution of fair access pupils among schools;
- once a fair access placement is agreed, make contact with the family and arrange for the child to go on roll as soon as possible, but no later than 5 school days of the offer and to start no later than a further 5 school days;
- where appropriate, make a referral to the area SEND team as soon as a placement is agreed.

Appendix 2

Exceptions to the Infant Class Size Limit

Section 1 of the School Standards & Framework Act (SSFA) 1998 limits the size of an infant class (i.e. a class in which the majority of children will reach the age of five, six or seven during the school year) to 30 pupils per school teacher.

However, the School Admissions (Infant Class Sizes) (England) Regulations 2012 permit children to be admitted as exceptions to the infant class size limit. These children will remain an 'excepted pupil' for the time they are in an infant class or until the class numbers fall back to the current infant class size limit. The excepted children are:

- a) children admitted outside the normal admissions round with an education, health and care plan specifying a school;
- b) looked after children and previously looked after children admitted outside the normal admissions round;
- c) children admitted, after initial allocation of places, because of a procedural error made by the admission authority or local authority in the original application process;
- d) children admitted after an independent appeals panel upholds an appeal;
- e) children who move into the area outside the normal admissions round for whom there is no other available school within reasonable distance;
- f) children of UK service personnel admitted outside the normal admissions round;
- g) children whose twin or sibling from a multiple birth is admitted otherwise than as an excepted pupil;
- h) children with special educational needs who are normally taught in a special educational needs unit attached to the school, or registered at a special school, who attend some infant classes within the mainstream school.

Appendix 3

Expectations of Fair Access Panels

There are clear benefits of utilising a panel to place children under the Fair Access Protocol, especially for children who exhibit challenging behaviour and those returning from alternative provision, as long as a placement can be agreed within the maximum 20 school days. Fair Access panels provide for a fair and transparent distribution of children and enables headteachers to make collaborative decisions.

Where a panel operates, the following expectations apply:

1. All schools will participate in the panel process.
2. The representative from the school must be authorised to participate in discussions, make decisions on placing children via the Protocol, and admit pupils when asked to do so under the Protocol.
3. If a school has no representation at a panel, that school could still be allocated a fair access child.
4. Schools that have already admitted a fair access child in the current academic year could still be allocated further fair access children.
5. For own admission authority schools, the delegated representative will not need to seek prior or subsequent authorisation from their governing body to admit a fair access child. This is because when a child is placed in accordance with the Fair Access Protocol, the admission authority for that school must admit the child.
6. All children will be placed at the panel.
7. Paperwork will be circulated at least five school days before a panel.
8. Paperwork will be as comprehensive as possible and will include information made known to the School Admissions team or the Area Inclusion Manager / Pupil Referral Unit as appropriate.
9. Attendees will have read the paperwork in advance of the panel.
10. Panel paperwork will include a named person and contact details for the previous school if available.
11. Panels may be heard virtually where appropriate.
12. Service representatives will be invited to attend panel meetings where it is felt that they might contribute to the discussion or be needed to support integration to a school.
13. Placement decisions will be made in the best interests of the child.
14. A child may be placed within the area where they were previously at school, even if their preference is for schools in another area. This is to increase a school's accountability for a child leaving that school.
15. Where a placement in another area is thought to be in the child's best interests, representatives from both areas might be invited to the panel meeting.
16. Notes of meetings will be made, which will set out the factors that informed the decision. These will be circulated to all those invited and will be made available under a Subject Access Request, as appropriate.

Addressing Inequalities

Equalities Impact Assessment

Surrey County Council Equality Impact Assessment Template

Stage one – initial screening

What is being assessed?	Fair Access Protocol 2023-24
Service	School Admissions
Name of assessor/s	Claire Potier
Head of service	Carrie Traill (acting)
Date	XX/06/2023
Is this a new or existing function or policy?	Existing policy under review

Write a brief description of your service, policy or function. It is important to focus on the service or policy the project aims to review or improve.

This EIA relates to the processes and criteria for Surrey's Fair Access Protocol. Each local authority is required to have a Fair Access Protocol which ensures that access to education is secured quickly for Surrey children who have no school place and that all schools in Surrey admit children their fair share of children with challenging behaviour under the Protocol.

Indicate for each equality group whether there may be a positive impact, negative impact, or no impact.

Equality Group	Positive	Negative	No impact	Reason
Age	X			Schools will receive pro rata AWPU funding for some Year 11 pupils admitted after 05 October 2023 until the end of the Spring term 2024
Gender Reassignment			X	

Disability	X			Children with special educational needs & disability who do not have an EHCP and children with disabilities or medical conditions which have already impacted on their attendance or participation at school will be placed more effectively in school through the Fair Access Protocol if they have been unable to secure a school place
Sex			X	
Religion and belief	X			In considering a placement, the School Admissions team or placement panel will have regard to a view of the parent regarding the religious ethos of a school
Pregnancy and maternity			X	
Race	X			Asylum seeker and refugee children will be placed more effectively in school through the Fair Access Protocol if they have been unable to secure a school place
Sexual orientation			X	
Carers	X			Children who are carers will be placed in school more effectively through the Fair Access Protocol if they have been unable to secure a school place
Other equality issues – please state	X			Previously Looked After Children will be placed in school more effectively through the Fair Access Protocol if they have been unable to secure a school place
HR and workforce issues			X	

Human Rights implications if relevant			X	
<p>If you find a negative impact on any equality group you will need to complete stage one and move on to stage two and carry out a full EIA.</p> <p>A full EIA will also need to be carried out if this is a high profile or major policy that will either effect many people or have a severe effect on some people.</p>				

Is a full EIA required?	Yes (go to stage two)	No
		X
<p>If no briefly summarise reasons why you have reached this conclusion, the evidence for this and the nature of any stakeholder verification of your conclusion.</p>		
<p>There are no negative impacts on any equality group. Placements under the Fair Access Protocol are in the region of XX a year, and as such this Protocol will not affect many people nor have a severe effect on some people.</p>		
<p>Briefly describe any positive impacts identified that have resulted in improved access or services</p>		
<p>The Fair Access Protocol is designed to ensure that children who are out of school are placed in school quickly. The equality groups identified above will face a positive impact as a result of this Protocol as they will be placed in school quickly, even if a school is full.</p>		

For screenings only:

Review date	
Person responsible for review	Claire Potier
Head of Service signed off	Carrie Trail
Date completed	XX June 2022

- Signed off electronic version to be kept in your team for review
- Electronic copy to be forwarded to Equality and Diversity Manager for publishing

Stage 2 – Full Equality Impact Assessment - please refer to [equality impact assessment](#) guidance available on Snet

SURREY COUNTY COUNCIL

CABINET MEMBER FOR EDUCATION AND LEARNING

DATE: 25 JULY 2023



REPORT OF CABINET MEMBER: CLARE CURRAN, CABINET MEMBER FOR EDUCATION AND LEARNING

LEAD OFFICER: RACHAEL WARDELL, EXECUTIVE DIRECTOR FOR CHILDREN, FAMILIES AND LIFELONG LEARNING

SUBJECT: APPROVAL OF MAINTAINED SCHOOLS' DEFICITS

ORGANISATION STRATEGY PRIORITY AREA: GROWING A SUSTAINABLE ECONOMY SO EVERYONE CAN BENEFIT

SUMMARY OF ISSUE:

This report provides summary details of Surrey maintained schools' total balances and the council's Dedicated Schools Grant balances at 31 March 2023; and seeks Cabinet Member approval for one school that is projecting a deficit in excess of 5% of their budget share at 31 March 2024.

RECOMMENDATIONS:

It is recommended that:

1. the level of balances held by Surrey maintained schools is noted;
2. the level of Dedicated Schools Grant is noted;
3. licensed deficit is approved for one school (Godstone Village School) as set out in paragraph 14.

REASON FOR RECOMMENDATIONS:

Approval of a licensed deficit will set the parameters within which schools' finances can be monitored.

DETAILS:

BACKGROUND

1. Total net balances held by Surrey's 188 maintained schools as at 31 March 2023 were £43.8m. For comparative purposes, table 1 below excludes from current and all prior year figures, the balances held by schools which had

converted to academy status by 31 March 2023. Responsibility for the finances of academies transfers to the Education & Skills Funding Agency on conversion. The council is not currently informed of academies' financial balances prior to their publication in December each year.

Table 1: Total school balances

School phase	As at 31 March 2021 £m	As at 31 March 2022 £m	As at 31 March 2023 £m	Number of maintained schools
Primary including nursery	26.5	27.2	26.4	161.0
Secondary	9.4	11.4	11.5	10.0
Special	4.6	4.7	5.2	12.0
Pupil referral units	0.8	0.7	0.7	5.0
Total individual schools' balances	41.3	44.0	43.8	188.0

The table excludes from current and prior year totals, all schools that had converted to academy status by 31 March 2023.

LOCAL AUTHORITIES' FINANCIAL MONITORING OF SCHOOLS: DFE REQUIREMENTS

- The Department for Education (DfE) requires each local authority's Chief Finance Officer (CFO) to produce an Outturn statement indicating the extent of any under or overspending of Dedicated Schools Grant (DSG) by the authority. In addition, the local authority (LA) must demonstrate deficits and large surpluses in schools are short-term and actively managed.
- The DfE expects local authorities to prepare a recovery plan if they have overspent their DSG. At 31 March 2023 Surrey had a net (including after Safety Valve contributions) DSG overspend of 5.9% of gross DSG in 2022/23.
- The in-year DSG Deficit at 31 March 2023 was £3.5m. This includes a net £7.8m overspend of High Needs Block (HNB) DSG (£31.3m overspend less £23.5m of Safety Valve contributions) as shown in table 2. The SEND transformation programme is working to contain HNB spend and reduce the in-year deficit to zero over the next five years.

Table 2: DSG Balances at 31 March 2023

	31/03/2022 deficit/ surplus(-) £m	Movement £m	31/03/2023 deficit/ surplus (-) £m
Schools	-6.9	-1.5	-8.4
Central schools	-0.2	-0.3	-0.5
Early Years	-13.1	-2.5	-15.6
High Needs	78.1	7.8	85.9
	57.9	3.5	61.4

SURPLUS BALANCES

5. Of Surrey's 188 maintained schools, 185 (98.4%) had surplus balances at 31 March 2023. Year-end surplus balances are typically expressed as a percentage of each school's total revenue funding for the year. School surpluses can be analysed across phases as shown in table 3.

6.

Table 3: schools surpluses by phase

	All schools		Nursery and primary		Secondary		Special		PRUs	
As at 31 March 2023	No of schools	%	No of schools	% of phase	No of schools	% of phase	No of schools	% of phase	No of schools	% of phase
Surpluses										
25%plus	11	5.9%	8	4.97%	0	0.00%	1	8.33%	2	40.0%
20-25%	13	6.9%	10	6.21%	1	10.00%	2	16.67%	0	0.0%
15-20%	30	16.0%	23	23.60%	5	50.00%	1	50.00%	1	20.0%
10-15%	48	25.5%	38	26.09%	3	30.00%	6	16.67%	1	20.0%
5-10%	44	23.4%	42	22.98%	0	0.00%	2	16.67%	0	0.0%
0-5%	39	20.7%	37	98.14%	1	10.00%	0	100.0%	1	100.0%
	185	98.4%	158	98.14%	10	100.0%	12	100.0%	5	100.0%
Deficits										
0-5%	2	1.1%	2	1.24%	0		0		0	
5-10%	0	0.0%			0		0		0	
10-15%	1	0.5%	1	0.62%	0		0		0	
15%+	0	0.0%	0	0.00%	0		0		0	
	3	1.6%	3	1.86%	0	0.0%	0	0.0%	0	0.0%
		100.0%		100.0%				100.0%		100.0%
	188	100.0%	161	100.0%	10	100.0%	12	100.0%	5	100.0%

7. Although a marginal surplus can represent prudent financial management, excessive balances are discouraged as funding is allocated to schools on the basis of the specific needs of current pupils and is intended to be spent on those pupils.

8. The local authority usually asks schools with balances in excess of 15% of funding to provide details of the purpose for which they are held. This work

is usually undertaken in the summer term and so the latest data currently available relates to surplus balances at 31 March 2022. At that date the total surplus balances held by schools with surpluses in excess of 15% of budget was £25.2m, A summary of information provided by schools on the purpose for which balances were held is provided below. However, it should be noted that these are merely indications of schools' intentions at the time. The exercise for balances at 31 March 2023 is currently in progress.

Proposed use of surplus balances by schools whose surplus balances at 31 March 2022 exceeded 15% of 2021/22 funding	£000s
External funding legally earmarked for specific projects	313
Capital projects	4,677
Building maintenance risks	365
Specific non capital development projects	823
Retrospective pay awards	445
Managing falling pupil numbers	281
Short term impact of increased pupil numbers	143
Supporting 2022/23 budget, other than specific projects	2,334
Supporting later years' budgets other than specific projects	4,180
Community focused	751
Other purposes not listed above	1,252
Total reported as committed	15,564
Reported as uncommitted	5,044
No return provided	4,688
Total in scope	25,296

DEFICITS

- The total value of schools' deficits at March 2023 is £0.18m, an increase from £0.08m in March 2022. Table 4 shows the number of schools with deficits of varying magnitude in the past three years – adjusted to exclude academy converters. A school's deficit is expressed as a percentage of its total delegated revenue budget received that year.

Table 4: number of schools with deficits

Deficit as % of budget share*	at 31 Mar 21 Number of schools	at 31 Mar 22 Number of schools	at 31 Mar 23 Number of schools
0-5%	2	2	2
5-10%	0	1	0
10% plus	0	0	1

**The table excludes from current and prior year totals, all schools that had converted to academy status by 31 March 2023*

10. Schools converting to academies transfer their accumulated balances, whether surplus or deficit, unless converting to a sponsored academy – typically following Ofsted concerns. In this instance the local authority is required to fund any accumulated deficits. During 2022/23 the council has not funded any such deficits. All school improvement partners are aware of financial constraints and manage schools within agreed funding levels.
11. Of Surrey's 188 maintained schools, 3 had deficit balances as at 31 March 2023. Smaller deficits are frequently temporary, but larger deficits require a robust recovery plan that repays the deficit whilst minimising the impact on the education of pupils at the school.

SCHOOLS SEEKING APPROVAL FOR DEFICITS IN EXCESS OF 5%

12. Cabinet Member approval is required where schools seek a licensed deficit in excess of 5% of the school's budget share. One school, Godstone Village School, had deficits in excess of 5% at 31 March 2023.

Godstone Village School 7.4%

	% of annual budget*	£
Deficit as at 31 March 2023	12.01%	127,581
Projected Deficit as at 31 March 2024	7.41%	76,982

13. The deficit at Godstone Primary School began following an employment process which resulted in additional legal costs being incurred by the school. These cost, alongside other associated costs, weakened the school financially and school improvement support and additional capacity was sought which resulted in a Good Ofsted judgement in December 2022. The local authority has agreed that it will repay the costs incurred back to Godstone Primary School in instalments once it is evident that the remaining deficit has substantially reduced. I.e. the local authority

agreement is a limited contribution to legal costs which is less than the overall deficit.

CONSULTATION:

14. On receipt of their annual funding notifications, each school prepares a budget. Schools facing challenges are then supported in developing a robust, balanced budget plan or requesting a licensed deficit with a recovery plan. In developing a recovery plan, officers from the authority's school effectiveness team, finance and HR are consulted.

RISK MANAGEMENT AND IMPLICATIONS:

15. Surplus balances are monitored as risks include the maintenance by schools of inappropriately high surpluses which leave current pupils' needs unmet. As part of the monitoring of a schools' performance, the current level of balances is considered and recommendations are made regarding their potential use.
16. Schools with deficits are required to develop recovery plans. Schools with large deficits can struggle to repay deficits without impacting on standards so the potential impact on pupil attainment is considered when establishing the repayment period. Where a weak school is obliged to academise – under sponsored academy status - the local authority is normally expected to fund any deficit on conversion. This becomes a pressure on council funds required for other services. Schools with deficits are therefore subject to enhanced monitoring arrangements until deficits are fully repaid.

Financial and value for money implications:

17. All maintained schools are expected to repay any deficits and must submit recovery plans to the local authority. These vary from one to three years depending on the size of the deficit and the potential impact of repayments on the school's performance.
18. Relatively few Surrey schools have deficits as schools at risk are closely monitored and advice is provided where needed.

Section 151 Officer commentary:

19. Significant progress has been made in recent years to improve the Council's financial resilience and the financial management capabilities across the organisation. Whilst this has built a stronger financial base from which to deliver our services, the increased cost of living, global financial uncertainty, high inflation and government policy changes mean

we continue to face challenges to our financial position. This requires an increased focus on financial management to protect service delivery, a continuation of the need to be forward looking in the medium term, as well as the delivery of the efficiencies to achieve a balanced budget position each year.

20. In addition to these immediate challenges, the medium-term financial outlook beyond 2023/24 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority, in order to ensure the stable provision of services in the medium term.
21. As such, the Section 151 officer supports the ongoing monitoring of school balances and the proposed licensed deficits.

Legal implications – Monitoring Officer:

22. The legal framework is set out in the Schools & Early Years Finance (England) Regulations 2023, the Scheme for Financing Schools Statutory Guidance issued by the Department for Education in April 2023 and the Surrey Scheme for Financing Schools (September 2020). There are no significant legal implications arising from this report.

Equalities and diversity:

23. Where schools are in deficit, budget recovery plans may impact on particular groups. However, in determining a recovery plan, schools are expected to seek advice from curriculum, HR and finance consultants and appropriate safeguards are built into the plan. In the past this has necessitated seeking DfE approval for a recovery plan to exceed three years, to protect the interests of vulnerable pupils. Schools with excessive balances are challenged in order to ensure that funding is directed to meeting the needs of pupils in the school.

Other implications:

24. The potential implications for the following Council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

Area assessed:	Direct Implications:
Corporate Parenting/Looked After Children	No significant implications arising from this report
Safeguarding responsibilities for vulnerable children and adults	No significant implications arising from this report

Compliance against net-zero emissions target and future climate compatibility/resilience.	No significant implications arising from this report
Public Health	No significant implications arising from this report

WHAT HAPPENS NEXT:

24. Council officers will continue to provide support to all schools in deficit to ensure they are short-term and actively managed. DSG deficits and surpluses will continue to be managed to ensure that DfE targets are met

Contact Officer:

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Consulted:

Clare Curran, Cabinet Member for Education and Learning

Rachel Wigley, Director of Finance – Insight and Performance

Liz Mills, Director of Education and Lifelong Learning

Annexes:

None

Sources/background papers:

- Schools & Early Years Finance (England) Regulations 2023
 - Surrey Scheme for Financing Schools September 2020
 - Scheme for Financing Schools (DfE 31 March 2023)
 - Dedicated Schools Grant conditions of grant 2023 to 2024
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