

SURREY COUNTY COUNCIL**CABINET MEMBER FOR SCHOOLS, SKILLS AND EDUCATIONAL ACHIEVEMENT****DATE: 28 JULY 2015****LEAD OFFICER: JULIE FISHER, DEPUTY CHIEF EXECUTIVE****SUBJECT: PRIMARY AND SECONDARY FAIR ACCESS PROTOCOLS 2015/16****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. A Fair Access Protocol ensures that unplaced children, especially the most vulnerable, are offered a place at a suitable school in their home local authority as quickly as possible. This includes admitting children above the published admission number to schools that are already full.

The proposed Protocols set out the criteria that the Local Authority will use to determine which children will be placed under Surrey's Fair Access Protocol in 2015/16 and how cases will be considered. The changes proposed to the Protocols for 2015/16 take into account comments received from schools and Surrey County Council (SCC) officers.

RECOMMENDATIONS:

It is recommended that the Cabinet Member agrees the proposed Primary and Secondary Fair Access Protocols for 2015/16.

REASON FOR RECOMMENDATIONS:

- The Local Authority is required to have a Protocol in place that all schools must participate in.
- The proposed Protocols meet the requirements of the 2014 Department for Education School Admissions Code.
- Schools have been involved in the review.
- The Protocol will ensure that children who are out of school can be placed in school quickly.
- The Protocol will ensure that no school is expected to admit more than their fair share of children with challenging behaviour or children previously excluded from other schools.

DETAILS:**Changes to the Primary and Secondary Fair Access Protocols**

1. Copies of the proposed Primary and Secondary Fair Access Protocols for 2015/16 are attached as **Annexes 3 and 4**.

2. Generally the Protocols have been working well and there has been little demand for change.
3. The majority of changes generally relate to grammatical changes in some paragraphs and some amendment to text following suggestions for change from the Fair Access Review Group.
4. The funding arrangements for fair access children who have been admitted into year 11 after the October census have been set out in full in paragraph 8.2 of the Secondary Fair Access Protocol to clarify the timescales for the funding being released to schools.

CONSULTATION:

5. Comments were initially sought from the Fair Access Protocol Review Group which met on 3 February, 17 March and 28 April 2015. Representation on that group was from schools, Secondary Phase council, Local Authority Area Teams and Surrey's Admissions Team.
6. Feedback from the Fair Access Protocol Review Group was that, as last year, the Protocols were working well and the few areas of concern rested more with the operation of the placement panels and the data that schools had to consider cases.
7. The Fair Access Protocol Review Group identified the need for the principles of Surrey's Fair Access Protocol to be separated from the main Protocol documents. It was agreed to introduce an overarching Framework document to set out the principles of Surrey's Fair Access Protocol and to introduce a section on the roles and responsibilities of the key stakeholders.
8. The Fair Access Protocol Review Group also suggested the introduction of a set of Common Principles for Surrey Fair Access Panels. As all secondary schools are already part of an existing panel, this will act as a reminder of good practice. For those areas which are piloting a Primary panel or those which are considering setting one up, the Common Principles will act as a guide. The Primary and Secondary Fair Access Protocols should be read alongside the Framework and the Common Principles documents.
9. The following changes were also agreed with the Fair Access Review Group and are highlighted in bold in the draft Protocol documents:
 - The removal of the Introduction and Principles of Surrey's Fair Access Protocol and their insertion into the Framework document.
 - All references to statements of SEN now also include reference to Education, Health and Care Plans (ECHPs).
 - The general presumption that when a child is removed from school for elective home education and then wants to return to school to the same phase of education, the child will normally be expected to be admitted to their original school (paragraph 6.6 in the Primary Protocol and paragraph 4.9 in the Secondary Protocol). This principle is already informally followed at some secondary fair access panels, and the Local Authority is looking to formalise it across Surrey.

- Extension of the reintegration period back into mainstream school for children returning from a Pupil Referral Unit beyond 12 weeks, at the decision of the Area Lead for Pupil Support (ALPS) (paragraphs 5.15 and 6.10 in the Primary Protocol and paragraph 4.13 in the Secondary Protocol).
 - Separating the process for admission of Primary fair access pupils into two clear processes: one for categories a) to g) where a panel process exists; and one for categories h) to p) and also categories a) to g) where no panel process exists (sections 5 and 6 of the Primary Protocol). This is in recognition that some areas are already piloting a panel process, and other areas are considering adopting this.
 - An explanation of the Primary process to establish which panel is responsible for considering placements under categories a) to g) where a panel process exists (section 7 of the Primary Protocol). This mirrors the existing explanation in the Secondary Protocol.
 - Clarification that where a fair access placement is considered to have broken down, the ALPS will work with the school to identify a solution for the child (paragraphs 5.16 and 6.11 in the Primary Protocol and paragraphs 4.13 and 5.8 in the Secondary Protocol).
 - Clarification that for own admission authority schools, the Headteacher or delegated representative at a panel should not need to seek prior or subsequent authorisation from their governing body to admit a fair access child (paragraph 5.9 in the Primary Protocol and paragraph 4.7 in the Secondary Protocol). This follows advice received from the Department for Education (DfE).
 - Additional detail on the funding of year 11 fair access children (paragraph 8.2 of the Secondary Protocol).
10. The draft Protocols were distributed on 21 May 2015 to all schools and to the Primary and Secondary Phase councils for consideration at their meetings in June and July 2015. The Area Education Officers and ALPS were also consulted and were asked to share the consultation with Education Welfare Officers and Pupil Referral Units.
11. Consultees were given until 25 June 2015 to submit their response.
12. The draft Protocols were also distributed to the Admissions Forum for its meeting on 19 June 2015.
13. A total of 4 written responses were received to the consultation, of which 2 submitted comments or suggestions for change.
14. The following comments were received:
- The Fair Access Protocol should include a clause exempting the siblings of fair access children admitted to a school from being given sibling priority as this is unfair. **Response: this is not possible in the Fair Access Protocol as any *non-fair* access in year applications must be considered according to each school's admissions arrangements and cannot be covered by fair access. Surrey believes it would be unlawful for an**

admission authority to include such an exemption in their own admission arrangements; and this is certainly the view of both Surrey and the Office of the Schools Adjudicator where the first child has been admitted with a statement of SEN/EHCP. It would also be unfair on families, as they would be less likely to be able to keep siblings together.

- In the Secondary Fair Access Protocol paragraph 2.2 e), is there a specification as to who can withdraw the child? **Response: only parents could withdraw their child from school. It would be unlawful for a school to take a child off roll in this way, unless the child was permanently excluded, in which case paragraph 2.2 a) would apply.**
15. Primary Phase Council agreed to hold a specific meeting to consider the consultation, which was attended by a group of Spelthorne primary headteachers.
16. The following comments were received from this meeting:

Comments relevant to the Fair Access Protocol:

- The Framework document paragraph 2.3 mentions 'all schools.....including academies'. In order to demonstrate inclusivity and show that all schools have equal responsibility to achieve fair access principles, it is suggested that this is substituted by 'all schools'. **Response: the Framework document has been updated to read 'all schools in the area, including all own admission authority schools'.**
- The Fair Access Protocol is necessary and covers the main aspects of the process. It will be more user-friendly now that the Introduction and Principles of Fair Access have been separated from the Protocols and incorporated in a separate framework document. **Response: no response needed.**

Comments not directly relevant to the Fair Access Protocol:

- Schools need reminding that they can send information to Admissions if they admit an in year child and subsequently discover that they are eligible for fair access funding and support. **Response: Admissions will remind schools of this when the final Protocols are sent out.**
 - Schools were unaware of the extent of the role of the ALPS documented in the Fair Access Protocol. Those primary schools currently operating a fair access panel system did not feel this reflected current practice, and that this required clarification. **Response: Spelthorne Schools Together are advised to discuss this with their Area Lead for Pupil Support.**
 - Schools were pleased to hear that from September 2015 Admissions will be using a new software IT system that will result in more information being available to schools in a timely manner. **Response: no response needed.**
17. Where appropriate, comments from the consultation have been taken in to account in the final Protocols recommended for approval for 2015/16.

RISK MANAGEMENT AND IMPLICATIONS:

18. The Protocols reduce the risk of children being left without a school place by ensuring there is a process to place them in school and a sense of shared responsibility between the Local Authority and the schools. Once placed in a school, the Protocols ensure that children will be placed on roll quickly to ensure that no child remains out of school for longer than necessary.
19. The Protocols reduce the risk of undersubscribed schools being asked to admit more than their fair share of children with challenging behaviour or children who have been excluded from other schools.

Financial and Value for Money Implications

20. Additional financial support to maintained schools for Fair Access Protocol placements comes from a designated budget allocation and acts as an incentive for schools to participate and to admit children.
21. Where financial support is available, it is targeted in respect of those children who are considered to be most challenging (categories a to h). Despite qualifying under the Protocol, the other categories of children will not necessarily require additional resource within schools. However, in order to encourage successful reintegration of children, funding for any term will continue to be forfeited if a child withdraws prior to the start of a term or if they withdraw within a term if the withdrawal is within 12 weeks of the placement being made.
22. Other funding is also available to schools for excluded pupils, dependent on the date of the exclusion and the school that the child had previously been excluded from.
23. In addition, maintained schools and academies will receive AWPU funding for Year 11 pupils placed on roll after 2 October 2015 under categories a) – h) of the Secondary 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 because this cohort will have left the school by the next census date. It is hoped that this will offer some incentive to schools to admit year 11 children.

Section 151 Officer Commentary

24. There has been increasing pressure on Fair Access Protocol funding in recent years. However, it is not anticipated that the changes to the Protocol will increase costs.

Legal Implications – Monitoring Officer

25. The 2014 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, including children excluded from other schools.
26. The proposed Fair Access Protocols are compliant with the 2014 DfE School Admissions Code.

27. Public sector equality duty:

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).

28. Pre-consultation:

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, particularly including the closure of any of its resources. Such consultation will need to involve those directly affected by such changes together with relevant representative groups. It will be important that the material presented to consultees provides sufficient information to allow for intelligent consideration and response in relation to the proposals. This information will need to be presented in a way that consultees will understand. The responses to the consultation will need to be conscientiously taken into account when the Cabinet Member makes any future decision.

29. Post-consultation:

In considering this report, the Cabinet Member must give due regard to the results of the consultation as set out in the report attached and the response of the Service to the consultation comments and conscientiously take these matters into account when making its final decision.

30. General Decision-Making:

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, the results of the consultation and the public sector equality duty.

31. Best value duty:

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

32. An Equality Impact Assessment has been completed and is included in **Annex 5**.
33. There are no negative impacts on any equality group. Placements under the Fair Access Protocols are currently less than 150 a year and as such these Protocols will not affect many people nor have a severe effect on some people.
34. The Fair Access Protocols are 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 these Protocols as they will be placed in school quickly, even if a school is full.

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 considered under Surrey's Fair Access Protocols.

Safeguarding responsibilities for vulnerable children and adults implications

36. The Fair Access Protocols provide 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 Protocols will be shared with all schools and relevant officers and implemented for 2015/16.
38. The Admissions Forum will monitor the effectiveness of the Protocols throughout the year.

Contact Officer:

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Consulted:

- Julie Fisher, Deputy Chief Executive
- Peter-John Wilkinson, Assistant Director for Children, Schools and Families
- Sarah Baker and Rachel Hickman, Legal and Democratic Services
- Infant, Junior, Primary and Secondary schools and PRUs in Surrey
- Area Education teams
- Children, Schools and Families Finance
- Members of the Admission Forum
- Diocesan Board representatives

Annexes:

Annex 1 – Framework for Fair Access Protocol
Annex 2 – Common Principles of Fair Access Panels
Annex 3 – Primary Fair Access Protocol
Annex 4 – Secondary Fair Access Protocol
Annex 5 – Equality Impact Assessment

Sources/background papers:

- Department for Education School Admissions Code - December 2014
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