

**SURREY COUNTY COUNCIL****CABINET MEMBER FOR SCHOOLS, SKILLS AND EDUCATIONAL ACHIEVEMENT****DATE: 19 JULY 2016****LEAD OFFICER: JULIE FISHER, DEPUTY CHIEF EXECUTIVE****SUBJECT: PRIMARY AND SECONDARY FAIR ACCESS PROTOCOLS 2016/17****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 2016/17 and how cases will be considered. The changes proposed to the Protocols for 2016/17 take into account comments received from schools and Surrey County Council (SCC) officers.

**RECOMMENDATIONS:**

It is recommended that the Cabinet Member for Schools, Skills and Educational Achievement agrees the proposed Primary and Secondary Fair Access Protocols for 2016/17.

**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 along with the Framework and Common Principles of Fair Access Panels for 2016/17 are attached as **Annexes 1 to 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 changes of wording to add clarity and some amendment to text following suggestions from the Fair Access Review Group.

#### **CONSULTATION:**

4. Comments were initially sought from the Fair Access Protocol Review Group which met on 19 January and 21 March 2016. Further comments were sought from this group on 20 June 2016 when the consultation had almost finished and anonymised responses to date could be discussed. Representation on that group was from schools, Secondary Phase council, local authority area teams and Surrey's Admissions Team.
5. 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.
6. The Fair Access Protocol Review Group agreed that the introduction in 2015/16 of an overarching Framework document to set out the principles of Surrey's Fair Access Protocol had worked well. The Framework included a section on the roles and responsibilities of the key stakeholders and gave schools and local authority teams more clarity about the rationale behind the Protocol.
7. The Fair Access Protocol Review Group further agreed that the introduction in 2015/16 of a set of Common Principles of Surrey Fair Access Panels had also been successful. As all secondary schools were already part of an existing panel, this had acted as a reminder of good practice for them. For those areas which were piloting a Primary panel or those which were considering setting one up, the Common Principles had acted as a guide. The Primary and Secondary Fair Access Protocols should be read alongside the Framework and the Common Principles documents.
8. Changes were agreed with the Fair Access Review Group and are highlighted in bold in the proposed Protocol documents. Changes include:
  - a. Clarification that children to be placed via the Fair Access Protocol must have a legal right to access state funded education (paragraph 2.2 of the Primary and Secondary Protocols).
  - b. Clarification of the definition of being out of education for longer than two months (paragraph 2.2g of the Primary and Secondary Protocols).
  - c. A new section to explain the circumstances in which a school might not admit a fair access child (section 7 in the Primary Protocol, replacing paragraph 6.12 in the 2015/16 Protocol, and section 6 in the Secondary Protocol).
  - d. A change in wording from "reasons" to "compelling reasons" why a school may not be an appropriate placement for the child (section 7 in the Primary Protocol, replacing paragraph 6.12 in the 2015/16 Protocol).

- e. Clarification that while community and voluntary controlled schools may refer cases back to the local authority for consideration under fair access, the local authority, as admission authority for the school, will decide whether a place should be offered at that school (paragraph 7.1 of the Primary Protocol and paragraph 6.1 of the Secondary Protocol).
  - f. The addition of a table in section 12 of the Primary Protocol setting out the process to place children, to replicate the table in the Secondary Protocol.
  - g. A change in wording in the Protocol and Framework from “7 calendar days” to “5 school days”.
9. The draft Protocols were distributed on 18 May 2016 to all schools and to the Primary and Secondary Phase councils for consideration. The Area Education Officers and ALPS were also consulted and were asked to share the consultation with Education Welfare Officers and Pupil Referral Units.
  10. Consultees were given until 22 June 2016 to submit their response.
  11. The draft Protocols were also distributed to the Admissions Forum for its meeting on 17 June 2016.
  12. The Fair Access Protocol Review Group had received a request to include year 6 pupils as a category within the Primary Protocol, to mirror the Secondary category of year 11 pupils. However, on consideration of this matter the Review Group decided not to progress this as a proposal for consultation. It was noted that the purpose of the Fair Access Protocol was to ensure vulnerable and challenging children were placed in school quickly and that schools with vacancies were protected from admitting an unfair number of challenging pupils. The Review Group felt that the majority of year 6 pupils would not be considered to be vulnerable or challenging and that placing them through the Protocol could cause unfair delay to their admission which could disadvantage them in their transition to secondary school. In this way, the issues for year 6 pupils are different from year 11 pupils. In addition, the Review Group felt that the current volume of non-fair access year 6 applicants would be unmanageable if they were all placed via fair access.
  13. However, alongside the consultation for 2016/17, consultees were asked about the specific issues that year 6 pupils may present when admitted into that year group. This was to enable the local authority to understand whether there were other categories of fair access not currently included in Surrey's Fair Access Protocol that might incorporate year 6 pupils. The following question was included with the consultation and consultees were invited to include an additional response with their consultation response: “What issues may year 6 admissions present for schools when the child does not ordinarily meet fair access?”
  14. A total of 11 written responses were received to the consultation, of which 9 submitted comments or suggestions for change.
  15. The following comments relating to the Protocols were received:
    - In the Common Principles point 5, it is not reasonable to put “all children must be placed”. This is not necessarily possible. **Response: this is worded in this way to communicate a strong expectation that all**

**children will be placed. We recognise that there may be specific cases where a child cannot initially be placed at a panel, but we do not propose to include this in the Common Principles.**

- The Common Principles point 11 implies that the child is being used to punish schools, which is ethically unsound. The school may have tried everything humanly possible to make a placement work, or a parent may have chosen to move a child for no good reason. **Response: we recognise that there are different reasons that cause a child to leave a school, and that school will always have an opportunity to account for this at the panel.**
- I believe the new section 7 of the Primary Protocol should be absolutely clear with no margin for interpretation. If we have a clear list of reasons why a school does not have to take a child, I think this will make panel working more clear cut and therefore fairer to schools. **Response: where a child is being placed via a panel, it will be the decision of that panel to decide whether to accept the argument of a school as to why they cannot admit. Every fair access case is different and we do not propose to include a list of what 'compelling reasons' there might be not to admit a child, as this could never be definitive and may be different in different cases.**
- In section 7 of the Primary Protocol, the quota needs quantifying, otherwise this clause will be interpreted differently across the county. **Response: this will be cross-referenced to section 4 of the Protocol for clarification.**
- In section 11 of the Secondary Protocol, category L, does this indicate that the pupils who need an allocated school in order for Education Welfare to issue a School Attendance Order do not need to be placed via a panel? **Response: Admissions is aware that there is varying practice here across Surrey, and will work with the four Area Leads for Pupil Support to agree a process of naming a school for this purpose.**
- It should be made clear in the Protocols that any decision should be in the best interests of the child and other children at the school. **Response: while the Protocols clearly state that placement decisions should be made in the best interests of the child (point 10 of the Common Principles), there may be cases where this has to override the best interests of other children at the school, in order to effect a school placement for a fair access child. An example of this would be a fair access child referred under category e) of the Protocol.**
- Paragraph 5.9 of the Primary Protocol states that the Headteacher of own admission authority schools should not need to seek prior or subsequent governing body authorisation to admit a fair access child; however, I believe schools have seven calendar days to respond to fair access requests. **Response: where a child is allocated a school via a panel, that school is then expected to admit the child without delay.**
- Where paragraphs 5.10 and 5.12 of the Primary Protocol are taken into account, care should be taken that decisions made are still in the best interests of the child. If panels do use these paragraphs as a way of

coming to a decision, there should be proper documentation about the rationale for the decision. **Response: this is a matter for individual panels as to how they operate.**

- Under paragraph 2.2 d) of the Protocol, should this be changed from 85% attendance to 90%? **Response: while we recognise that the threshold for persistent absenteeism has been raised to 90%, there has not been a strong demand from schools to alter this category of fair access accordingly. Changing this to 90% would result in more children being designated fair access and hence would have an impact on local authority services such as Admissions and Access To Education. Therefore we do not propose to revise this category at this time.**
- Could the Protocols include a process whereby if there is a family of fair access siblings who cannot be accommodated at a local school together without one or more of the year groups admitting over their published admission number, the parent is contacted by Admissions and advised of the closest school that could accommodate all of them within number? **Response: since there is no automatic duty under fair access to meet parental preference, even if a parent did alter their preference schools as a result of discussion with Admissions, this would not necessarily mean that a closer local school might not still be expected to admit all the siblings. Therefore we do not propose to add this process to the Protocols.**

Comments related to the separate question about year 6 pupils:

- Where it states that 'vulnerable children will be placed in a suitable school', should we consider the aspiration to try to place vulnerable children in the closest outstanding school? This way the most vulnerable children will be placed in an establishment that will be providing them with the best care our schools have to offer. **Response: in some parts of Surrey where there are fewer schools, the closest outstanding school could be located some distance away, resulting in the child having to travel further and the local authority incurring additional transport costs. This could also result in fewer schools admitting fair access pupils if there was a focus on predominantly outstanding schools. Furthermore, a school's Ofsted rating of outstanding could be several years old and may not reflect the current reality.**
  - I totally agree that year 6 pupils should not form a fair access category of their own. Year 11 makes more sense, as this is when they take exams which have implications for their life chances. In Year 6 they would take SATs which have no impact whatsoever, but since they affect schools so seriously, it would be most unfair to place them via Fair Access. **Response: we agree that year 6 pupils should not be a standalone category of fair access.**
16. The Fair Access Protocols were circulated to Primary Phase Council. Members were supportive of the Protocols and their principles and did not have any comments to make as a group.

17. The Fair Access Protocols were also circulated to Secondary Phase Council. Members did not have any comments to make as a group.
18. Where appropriate, comments from the consultation have been taken in to account in the final Protocols recommended for approval for 2016/17.

#### **RISK MANAGEMENT AND IMPLICATIONS:**

19. 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.
20. 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**

21. 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.
22. Where financial support is available, it is targeted in respect of those children who are considered to be most challenging (categories a to g for Primary and categories a to h for Secondary). 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.
23. 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.
24. In addition, maintained schools and academies will receive AWPU funding for Year 11 pupils placed on roll after 2 October 2016 and before the end of the spring term 2017 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**

25. 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**

26. 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.

27. The proposed Fair Access Protocols are compliant with the 2014 DfE School Admissions Code.

28. 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).

29. 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.

30. 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.

31. 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.

32. 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**

33. An Equality Impact Assessment has been completed and is included in Annex 5.
34. 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.
35. 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**

36. 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**

37. 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:**

38. The Protocols will be shared with all schools and relevant officers and implemented for 2016/17.
39. The Admissions Forum will monitor the effectiveness of the Protocols throughout the year.

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#### **Contact Officer:**

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#### **Consulted:**

- Julie Stockdale, Acting 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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