

**SURREY COUNTY COUNCIL****CABINET MEMBER FOR EDUCATION****DATE: 04 JULY 2017****LEAD OFFICER: JULIE FISHER, DEPUTY CHIEF EXECUTIVE****SUBJECT: PRIMARY AND SECONDARY FAIR ACCESS PROTOCOLS  
2017/18****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 2017/18 and how cases will be considered. The changes proposed to the Protocols for 2017/18 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 2017/18.

**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.

<b><u>DETAILS:</u></b>
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### **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 2017/18 are attached as **Annexes 1 to 4**.
2. The Primary and Secondary Fair Access Protocols should be read alongside the Framework and the Common Principles documents.
3. The Framework includes a section on the roles and responsibilities of the key stakeholders, and gives schools and local authority teams more clarity about the rationale behind the Protocol.
4. The Common Principles of Surrey Fair Access Panels acts as a reminder of good practice for all Secondary schools, as they are each part of an existing panel, and for those areas which have set up a Primary panel. It also provides a guide for areas which have recently set up a Primary panel or are considering setting one up.
5. Generally the Protocols have been working well and there has been little demand for change.
6. 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.

<b><u>CONSULTATION:</u></b>
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7. Comments were initially sought from the Fair Access Protocol Review Group which met on 16 January and 20 March 2017. Further comments were sought from this group on 06 June 2017 when the consultation had almost finished and anonymised responses to date could be discussed. Representation on that group is from schools, Secondary Phase Council, local authority Area Leads for Pupil Support (ALPS) and Surrey's Admissions Team.
8. 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.
9. Changes were agreed with the Fair Access Review Group and are highlighted in bold in the proposed Protocol documents. Changes include:
  - Reinforcement that the Fair Access Protocols apply only to children living in Surrey (paragraph 1.2 of the Framework).
  - A change in wording from "assessment" to "review" in terms of what the ALPS will request from the area Education Psychology team in the case of a child who may not be suitable for mainstream schooling (paragraph 4.1 of the Framework and paragraph 3.6 of the Primary and Secondary Protocols).

- An additional responsibility for schools reflecting what they should already do, setting out that schools should, where appropriate, make a referral to the area SEND team as soon as a placement is agreed (paragraph 4.1 of the Framework).
  - A new paragraph that sets out the process to place a Key Stage 1 fair access child where a panel exists but where most schools are full and Infant Class Size legislation applies (paragraph 5.4 of the Primary Protocol).
  - A new paragraph that sets out the process where the Access To Education team cannot immediately accommodate a child (paragraph 5.6 of the Primary Protocol and replicated in the flow chart in Appendix 2 to the Primary Protocol; and paragraph 4.4 of the Secondary Protocol and replicated in the flow chart in Appendix 1 to the Secondary Protocol).
  - A change in wording in the Protocols from “approached to admit” to “expected to admit”, to clarify that a school could still be contacted and asked to admit a fair access child, but would not be expected to admit if they met one or more of the bulleted points set out (paragraph 6.3 of the Primary Protocol).
  - A new paragraph to explain that if a child falling under categories h) to p) of the Primary Protocol cannot be placed within 3 weeks in an area that has a panel, the Admissions team reserves the right to refer the case to the panel for consideration (paragraph 6.7 of the Primary Protocol).
  - Clarification that where a child lives outside Surrey but otherwise meets the fair access criteria, their application should generally be considered as per normal in-year processes (paragraph 9.2 of the Primary Protocol and paragraph 8.2 of the Secondary Protocol).
  - Clarification that where a fair access child is entitled to transport and a public transport route exists, if a taxi is deemed necessary to support the child’s integration then this will normally only be funded for one term (paragraph 10.3 of the Primary Protocol and paragraph 9.4 of the Secondary Protocol).
  - In addition, all references to statements of SEND have been removed as all existing statements will have been converted to EHCPs before the end of the 2017/18 academic year; and all references to Area Education Officers have been altered to refer to the local authority instead as these posts no longer exist.
10. The draft Protocols were distributed on 18 May 2017 to all schools and to the Primary and Secondary Phase councils for consideration. The ALPS were also consulted and were asked to share the consultation with Education Welfare Officers and Pupil Referral Units.
  11. Consultees were given until 14 June 2017 to submit their response.
  12. The draft Protocols were also distributed to the Admissions Forum for its meeting on 16 June 2017.
  13. A total of four written responses were received to the consultation from schools.
  14. One of the respondees submitted the following comment:

- The Protocol is sensible and clear, however management of it at local level is inappropriate use of Headteacher time due to limited number of referrals. Management of it at local level does not ensure that a decision made is in the best interests of the child. **Response: Where panels exist, placement decisions are delegated to schools and the area teams. This comment has been passed to the relevant Area Lead for Pupil Support.**
15. Primary Phase Council also submitted a response to the consultation. It supported the proposed new paragraph setting out the process to place a Key Stage 1 fair access child where a panel exists but where most schools are full and Infant Class Size legislation applies (paragraph 5.4 of the Primary Protocol).
  16. The proposed change to paragraph 5.6 of the Primary Protocol was challenged by Primary Phase Council as there were concerns why Access To Education not having capacity would be the driver for supporting a quicker move. Primary Phase Council felt that account still needed to be given to the school context and why they may not be able to accommodate a transfer. **Response: the rationale for the Fair Access Protocols is to ensure that the most vulnerable children secure a school place as quickly as possible. If there were a delay in placement because of a capacity issue within Access To Education, Admissions would wish to take a pragmatic approach and seek to place the child directly in a school, to avoid to the child being out of school any longer than necessary. Identification of a suitable school by Admissions would of course take into account the context of each possible school.**
  17. Primary Phase Council also felt that a wider discussion was needed regarding the underlying principles and whether the proposed changes for 2017/18 supported the principles of the approach as a whole. **Response: the Fair Access Review Group will continue to scrutinise the Protocols and their effectiveness during the next academic year.**
  18. A response from Secondary Phase Council confirmed that headteachers were familiar with the Protocol and supported in principle the proposed changes for 2017/2018. However Secondary Phase Council also commented that headteachers would welcome more comprehensive information supporting all admissions applications, not just those coming to Fair Access, to assist all parties to process applications and find places for students that best meet needs. **Response: admissions legislation restricts the information that parents can be asked for on the application form; however the Admissions team will continue to take steps to ensure that all relevant information is passed to schools, while making it clear to schools where there is information that must not be used as part of the decision-making process as to whether to offer a child a place.**
  19. Secondary Phase Council also raised the need to review the way in which the Fair Access Protocol links to and impacts on/is impacted by processes across the wider system of related functions, i.e. in year admissions, fair access admissions, the annual admissions cycle, and SEND placements and alternative provision. It set out that reviewing the Protocol as a technical document in isolation from the practices and processes that underpin it does not enable the wider debate around change, which could improve the system as a whole. A dedicated review would be really helpful, to identify tensions and unlock blockages. **Response: these comments will be passed to the**

**new Vulnerable Learners Strategic Lead to consider how they might be involved in a wider review next year.**

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

20. 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 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.
21. 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**

22. 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.
23. 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.
24. 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.
25. In addition, maintained schools and academies will receive AWPU funding for Year 11 pupils placed on roll after 5 October 2017 and before the end of the spring term 2018 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**

26. The County Council is facing a very serious financial situation, whereby there are still substantial savings to be identified and delivered to achieve a balanced budget in the current year and a sustainable budget plan for future years.
27. The Section 151 Officer can confirm that the funding for fair access has been allocated within the high needs block of the dedicated schools grant. It is recognised in the SEND 2020 strategy that inclusion of pupils in mainstream

education can lead to better outcomes for the child and this policy is seen as key to that.

28. In spite of these factors, it is important to recognise that agreeing to this recommendation will reduce the Council's options to balance the budget, although in this instance if funding was not made available for fair access and inclusion, the probable alternative costs would be significantly higher.

<b>Legal Implications – Monitoring Officer</b>
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29. 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.
30. The proposed Fair Access Protocols are compliant with the 2014 DfE School Admissions Code.
31. Public sector equality duty:
32. 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).
33. Pre-consultation:
34. 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.
35. Post-consultation:
36. 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.
37. General Decision-Making:
38. 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.

39. Best value duty:
40. 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**

41. An Equality Impact Assessment has been completed and is included in Annex 5.
42. There are no negative impacts on any equality group. Placements under the Fair Access Protocols are currently less than 200 a year and as such these Protocols will not affect many people nor have a severe effect on some people.
43. 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.

### **Other Implications:**

44. 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

### **Corporate Parenting/Looked After Children implications**

45. 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**

46. 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.

<b>WHAT HAPPENS NEXT:</b>
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47. The Protocols will be shared with all schools and relevant officers and implemented for 2017/18.

48. The Admissions Forum will monitor the effectiveness of the Protocols throughout the year.

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**Consulted:**

- Julie Fisher, Deputy Chief Executive
- Julie Stockdale, SEND & School Organisation Strategic Lead
- Sarah Baker and Rachel Hickman, Legal and Democratic Services
- Infant, Junior, Primary and Secondary schools and Pupil Referral Units 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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