

SURREY COUNTY COUNCIL**CABINET MEMBER FOR ALL-AGE LEARNING****DATE: 03 JULY 2018****LEAD OFFICER: DAVID HILL, EXECUTIVE DIRECTOR FOR CHILDREN, FAMILIES & LEARNING****SUBJECT: PRIMARY AND SECONDARY FAIR ACCESS PROTOCOLS 2018/19****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 2018/19 and how cases will be considered. The changes proposed to the Protocols for 2018/19 take into account comments received from schools, Secondary Phase Council and Surrey County Council (SCC) officers.

RECOMMENDATIONS:

It is recommended that the Cabinet Member agrees the proposed Primary and Secondary Fair Access Protocols for 2018/19.

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 2018/19 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 main change relates to an alteration to the funding mechanism for fair access placements to achieve a more consistent funding system. There are also some changes of wording to add clarity and some amendment to text following suggestions from the Fair Access Review Group.

CONSULTATION:

7. Comments were initially sought from the Fair Access Protocol Review Group which met on 9 October 2017, 15 January and 19 March 2018. Further comments were sought from this group on 11 June 2018 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 Education Leads for Vulnerable Learners (ELVLs), Access To Education and Surrey's Admissions Team.
8. Feedback from the Fair Access Protocol Review Group was that, as in previous years, the Protocols were working well as a common detailed agreement of how these vulnerable children should be admitted to schools. Any issues that have arisen during the year are largely connected more with the operation of the fair access panels that place the children and with the information about a child available to schools to consider when placing.
9. The Fair Access Protocol Review Group undertook an exercise in January 2018 to benchmark whether neighbouring local authorities offered any funding for fair access placements. Of 11 responses, 6 indicated they offer funding but this was mostly generated by transferring funds from schools which had permanently excluded pupils or by using a contingency fund. Some local authorities which authorised funding required the admitting school to submit a request detailing how they proposed to spend it.
10. Changes to the Protocol for 2018/19 were agreed with the Fair Access Review Group and are highlighted in blue/bold font in the proposed Protocol documents. Changes include:
 - a proposed change to the funding mechanism for fair access pupils whereby for the majority of placements falling in a funded category, schools would be eligible for a flat rate of £1,000, rather than the tiered system currently that depends on the term in which the child is placed. The purpose of this proposed change is to achieve a more consistent funding system, and to

recognise that there is limited correlation between the term that a fair access pupil is admitted to a school and their relative needs (section 10 of the Primary Protocol and section 9 of the Secondary Protocol). Data analysis by Admissions of the current school year (up to January 2018) and the previous two school years demonstrated that this model would not lead to an increase in fair access spending.

- an exception to the above change is for pupils in year 2 of an infant school, year 6 at a primary school or pupils in year 11, where they are admitted in the summer term. For these pupils it is proposed that, providing they fall within a funded category, the receiving school would be eligible for a flat rate of £500 rather than the flat rate of £1,000 proposed above. This is in recognition that they would only be on roll for one term before they left in July. It is also the same amount that schools would have received under the 2017/18 Protocol for a summer term placement (section 10 of the Primary Protocol and section 9 of the Secondary Protocol).
 - a minor change in wording around the funding of permanently excluded pupils, to reflect the national change to pupil led funding from the 2018/19 financial year (section 10 of the Primary Protocol and section 9 of the Secondary Protocol).
 - a change in wording to clarify that children who have been receiving home education are not deemed to have been out of education (para. 2.2g of the Primary and Secondary Protocols).
 - in the Primary Protocol, an additional bullet in para. 2.2 to clarify that children to be placed under fair access must be of statutory school age.
 - in addition, all references to the Area Leads for Pupil Support (ALPS) have been altered to refer to Education Leads for Vulnerable Learners (ELVLs), to reflect the change in this post during 2017/18.
11. The draft Protocols were distributed on 17 May 2018 to all schools and Pupil Referral Units and to the Primary and Secondary Phase councils for consideration. The ELVLs, the Area Education Welfare Managers and the Elective Home Education Manager were also consulted.
 12. Consultees were given until 12 June 2018 to submit their response.
 13. The draft Protocols were also distributed to the Admissions Forum for its meeting on 15 June 2018.
 14. A total of five written responses were received to the consultation.
 15. Two responses were received from school representatives and their comments are summarised as follows:
 - Panels should only involve schools that are within a reasonable distance of where the child lives, even if they are outside the child's borough/district. This would lead to fewer schools needing to discuss a case and information being shared on a need to know basis. **Response: this is an operational issue that will be shared with the relevant Area Lead. The Protocol allows for panel chairs to liaise with neighbouring areas where they also operate a panel process, to negotiate a possible cross-borough placement**

(paragraph 8.6 of the Primary Protocol and paragraph 7.6 of the Secondary Protocol). Information is only shared when it is necessary and by secure means.

- Paragraph 2.2g of the Secondary Protocol says that children ‘who have been receiving home education are not deemed to have been out of education’ but any child who has been out of a formal education for a length of time requires support and the fair access process is appropriate for these students.

Response: the additional wording in paragraph 2.2g seeks to clarify that for the purpose of that category, children who have received home education are not deemed to have been out of education. The Protocol still provides a mechanism for schools to refer pupils who are receiving home education under paragraph 2.2f.

16. The response from Secondary Phase Council is summarised as follows:

- Further clarity regarding the identification of and processing of students who were considered within the elective home education criterion. They were concerned that a number of students may be home educated and then reapply for a place through Fair Access after a short period of time, perhaps to avoid a permanent exclusion or because they would like to try another school. They asked if the Protocol could address the need for clear and appropriate background checking to underpin the application of the criteria, to support students who are eligible but also to ensure that the system is not abused. **Response: the in year application form for parents includes a proforma for the previous school to complete which is shared with the Panel. Schools are also generally supportive of the presumption in the Protocol that children who have left a school for home education and then seek to return to mainstream schooling should usually be allocated a place at their previous school (para. 5.13 in the Primary Protocol and para. 4.11 in the Secondary Protocol). This prevents parents from gaining access to another school by deciding to withdraw their child from school to home educate, unless good reason is accepted by Panels. However, as a result of this comment, a new paragraph has been added to the Framework for Surrey’s 2018/19 Fair Access Protocol (paragraph. 3.10) to make reference to the process whereby Education Welfare will visit a family as soon as a school informs them of a child leaving for home education.**
- When students are referred back to a school after EHE, there is no mechanism to enforce their attendance or to coordinate with the school to ensure admission. Can the Protocol address the need for a process that can support this aspect of placement and mitigate the risk of students returning to panel as a consequence? **Response: once a fair access child has been allocated a school, that school is expected to place the child on roll within five school days. That school will then have the responsibility to refer to the Education Welfare Service if the child does not start or has poor attendance.**
- Further consideration of the finance allocation for year 11 students in the summer term as there is concern that a reduction in fees does not recognise the significant costs of examinations. **Response: year 11 fair access pupils who apply for a school in the summer term are rarely entered for examinations unless they have received sufficient education in Key**

Stage 4 for this to be viable and the deadline to be entered for examinations has not passed. The proposal in the 2018/19 Protocol to offer £500 of fair access funding for summer term year 11 placements reflects the same amount that a school would receive currently for any summer term placement – there is no reduction.

- In the light of the resource required by all parties to prepare for and consult around changes to the Protocol, is there a need for annual reviews?
Response: each local authority must have a Fair Access Protocol in place which must be agreed with the majority of schools. While there is no obligation to consult annually, for the purposes of transparency and partnership working the local authority is keen to ensure that all schools have opportunity to comment on changes. The Fair Access Review Group will consider whether any changes proposed for 2019/20 should be consulted on.
17. Primary Phase Council did not submit a response to the consultation.
18. The Spelthorne Confederation requested a two-year guarantee of Fair Access funding at £1,000 per placement for eligible categories in order to ensure the ongoing stability of the Fair Access process and panel working. They also thought a discretionary fund would be beneficial for the more complex cases, if it was possible to build into the budget. **Response: Surrey cannot guarantee funding beyond 2018/19. In terms of any additional funding, this would need to be discussed by the Schools Forum.**
19. Access To Education (A2E) felt that there needed to be some recognition of capacity issues within A2E and what assessments may or may not be appropriate. **Response: while the Protocol sets out clearly how children will be referred and allows for short term interim teaching from A2E in some cases, the intention of the Protocol is to place these vulnerable children as quickly as possible. There is already provision within the Protocol that permits the Admissions team to seek a direct placement with a school should A2E not be able to immediately accommodate a child.**

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 the High Needs Block 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 will be forfeited if the child withdraws within 12 weeks of the placement being made.
24. Other funding is also available to schools for permanently excluded pupils, dependent on the date of the exclusion and the school that the child had previously been permanently excluded from.
25. In addition, maintained schools and academies will receive AWPU funding for Year 11 pupils placed on roll after 5 October 2018 and before the end of the spring term 2019 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 could be significantly higher.

Legal Implications – Monitoring Officer

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.

Public sector equality duty:
31. 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).

Pre-consultation:

32. 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.

Post-consultation:

33. 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.

General Decision-Making:

34. 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.

Best value duty:

35. 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

36. An Equality Impact Assessment has been completed and is included in Annex 5.
37. There are no negative impacts on any equality group. Placements under the Fair Access Protocols are currently less than 250 a year and as such these Protocols will not affect many people nor have a severe effect on some people.

38. 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:

39. 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

40. 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

41. 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:

42. The Protocols will be shared with all schools and relevant officers and implemented for 2018/19.
43. The Admissions Forum will monitor the effectiveness of the Protocols throughout the year.

Contact Officer:

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Consulted:

- David Hill, Executive Director for Children, Families & Learning
- 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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