

SURREY COUNTY COUNCIL**CABINET MEMBER FOR ALL-AGE LEARNING****DATE: 1 JULY 2019****LEAD OFFICER: LIZ MILLS, DIRECTOR FOR EDUCATION, LIFELONG LEARNING & CULTURE****SUBJECT: PRIMARY AND SECONDARY FAIR ACCESS PROTOCOLS 2019/20****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 2019/20 and how cases will be considered. The changes proposed to the Protocols for 2019/20 take into account comments received from the Spelthorne Confederation and a Headteacher of two Pupil Referral Units.

RECOMMENDATIONS:

It is recommended that the Cabinet Member agrees the proposed Primary and Secondary Fair Access Protocols for 2019/20.

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 Expectations of Fair Access Panels for 2019/20, are attached as Annexes 1 to 4.
2. The Primary and Secondary Fair Access Protocols should be read alongside the Framework and the Expectations of Fair Access Panels 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 Expectations of Fair Access Panels document 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 are considering setting up a Primary panel.
5. Generally the Protocols have been working well and there has been little demand for change.
6. The main change relates to the removal of fair access funding from September 2019, although Age Weighted Pupil Unit (AWPU) funding will continue for Year 11 pupils, as the fair access funding will be redirected through the high needs block of the Dedicated Schools Grant to support all schools. There are also some changes of wording to add clarity and some amendments to officer posts and roles as a result of the restructure of the Children, Families, Lifelong Learning and Culture directorate.
7. 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.

CONSULTATION:

8. Comments were initially sought from the Fair Access Protocol Review Group which met on 5 November 2018, 21 January and 25 March 2019. Further comments were sought from this group on 10 June 2019 when the consultation had finished and responses could be discussed. Representation on that group is from schools, Pupil Referral Units, local authority Education & Inclusion Service Managers, Area Inclusion Managers, Access to Education, and Surrey's Admissions Team.
9. 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 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.
10. Changes to the Protocol for 2019/20 were agreed with the Fair Access Review Group and are highlighted in bold in the proposed Protocol documents. Changes include:
 - The removal of fair access funding from the Fair Access Protocol from September 2019, as it will be redirected through the High Needs Block to support all schools. The exceptions to the removal of this funding will be for Surrey year 11 fair access children admitted after the October census

and for permanently excluded children, for whom an AWPU funding calculation will still be carried out for schools.

- A minor change in wording around the process for a family to be offered a visit by the Inclusion Service (formerly the Education Welfare Service) when the child leaves a school for home education, prior to the child being registered as receiving home education (paragraph 3.10 of the Framework document).
- Clarification that the Area Inclusion Manager will notify the Admissions team when a child in a Pupil Referral Unit is ready to be placed in school via the Fair Access Protocol (paragraph 4.1 of the Framework document).
- The Expectations of Fair Access Panels has been renamed from Common Principles of Fair Access Panels. This is to be clearer about the accountability of schools in the operation of panels, where these exist.
- Additional bullets have been added to the Expectations of Fair Access Panels document to make it clear that schools that have already admitted a fair access child in the current academic year could still be allocated further fair access children; that service representatives will be invited to panels where it is felt they might contribute to the discussion or support the child's reintegration; and that notes of panels will be taken, which will set out the factors that informed the decision.
- All references to the Area Education Welfare Manager have been changed to the Area Inclusion Manager; references to the Education Welfare Officer have been changed to the Inclusion Officer; references to the Education Lead for Vulnerable Learners have been changed to the Education and Inclusion Service Managers; and references to the Area Lead for Specialist Teachers have been changed to The Area Lead for Specialist Teachers for Inclusive Practice (STIPS).

11. The draft Protocols were distributed on 9 May 2019 to all schools and Pupil Referral Units and to the Primary and Secondary Phase councils for consideration. The Dioceses, the Education and Inclusion Service Managers and the Area Inclusion Managers were also consulted.

12. Consultees were given until 6 June 2019 to submit their response.

13. A total of two written responses were received to the consultation and their comments are summarised as follows:

- The Spelthorne Confederation felt it was sensible to set out in the Expectations of Fair Access Panels that notes of meetings should be made, but felt the notes should be made by someone from Admissions who might attend each panel. **Response: This is an operational issue that will be discussed with the Education & Inclusion Service Managers as part of an area review. It is not an Admissions function to administer the panels.**
- A Headteacher from a Pupil Referral Unit (PRU) expressed concern that in relation to Section 4 of the Framework (Roles & Responsibilities), realistically the PRU would only be able to provide

minimal reintegration support rather than full outreach for reasons of capacity. **Response: The Framework has been reworded to say, "Where possible, the PRU will provide reintegration support to the incoming school."**

14. Primary and Secondary Phase Councils did not submit a response to the consultation.

RISK MANAGEMENT AND IMPLICATIONS:

15. 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.
16. 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:

17. Funding remains available to schools in 2019/20 for permanently excluded pupils, dependent on the date of the exclusion and the school that the child had previously been permanently excluded from.
18. In addition, maintained schools and academies will continue to receive Age Weighted Pupil Unit (AWPU) funding for Year 11 pupils placed on roll after 3 October 2019 and before the end of the spring term 2020 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 at any stage because this cohort will have left the school by the next October census date. It is hoped that this will offer some incentive to schools to admit year 11 children.

SECTION 151 OFFICER COMMENTARY:

19. 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.
20. However, whilst the cost of payments to schools admitting year 11 pupils under the Fair Access Protocol is already provided for within the high needs block of the Dedicated Schools Grant, there is a need for major cost reductions to be found in the high needs block. It is recognised that 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.

LEGAL IMPLICATIONS – MONITORING OFFICER:

21. 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.

22. The proposed Fair Access Protocols are compliant with the 2014 DfE School Admissions Code.
23. **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).
24. **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.
25. **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.
26. **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.
27. **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:

28. An Equality Impact Assessment has been completed and is included in Annex 5.

29. 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.
30. 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:

31. 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:

32. 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:

33. 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:

34. The Protocols will be shared with all schools and relevant officers and implemented for 2019/20.
35. The Fair Access Review Group will monitor the effectiveness of the Protocols throughout the year.

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Consulted:

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Infant, Junior, Primary and Secondary Schools and Pupil Referral Units in Surrey
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Diocesan Board representatives

Annexes:

Annex 1 – Framework for Fair Access Protocol

Annex 2 – Expectations of Surrey 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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