

SURREY COUNTY COUNCIL**CABINET MEMBER FOR ALL-AGE LEARNING****DATE: 06 JULY 2020****LEAD OFFICER: LIZ MILLS, DIRECTOR FOR EDUCATION, LIFELONG LEARNING & CULTURE****SUBJECT: PRIMARY AND SECONDARY FAIR ACCESS PROTOCOLS 2020/21****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 2020/21 and how cases will be considered.

RECOMMENDATIONS:

It is recommended that the Cabinet Member agrees the proposed Primary and Secondary Fair Access Protocols for 2020/21.

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.
- The Protocols will ensure that children who are out of school can be placed in school quickly.
- The Protocols 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.
- In light of the current Covid-19 Pandemic and the pressure this is placing on schools, no changes to the Protocols are proposed from 2019/20.

DETAILS:

1. Copies of the proposed Primary and Secondary Fair Access Protocols along with the Framework and Expectations of Fair Access Panels for 2020/21 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 panels which operate to agree fair access placements. As virtual panels have taken place during Covid-19, a sentence has been added to this document for 2020/21 to reflect this new practice.
5. Generally the Protocols have been working well and there has been little demand for change. As such the only changes are to dates and these have been highlighted in bold in the proposed Protocol documents.
6. Officers within Admissions and the area teams intend to review the operation of the Protocols for 2020/21 to try to achieve greater consistency across the Surrey quadrants.

CONSULTATION:

7. As no changes are being proposed and as schools are under pressure from the Covid-19 pandemic, the usual four-week summer consultation with schools has not taken place this year.
8. Consultation has taken place with Legal Services, Finance and the Fair Access Protocol Review Group.
9. Representation on the Fair Access Protocol Review Group is from schools, Pupil Referral Units, local authority Education & Inclusion Service Managers, Area Inclusion Managers, Access To Education and Surrey's Admissions Team.

RISK MANAGEMENT AND IMPLICATIONS:

10. 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.
11. 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:

12. Funding remains available to schools in 2020/21 for permanently excluded pupils, dependent on the date of the exclusion and the school that the child had previously been permanently excluded from. The basis of this funding is specified by the DfE and it is generally funded from sums recovered from the excluding school.

13. In addition, maintained schools and academies will continue to receive Age Weighted Pupil Unit (AWPU) funding for Year 11 pupils placed on roll after 01 October 2020 and before the end of the spring term 2021 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. The cost of this funding has been negligible in recent years as few year 11 pupils are placed under the Protocol.

Section 151 Officer commentary:
--

14. Although significant progress has been made over the last twelve months to improve the Council's financial position, the medium term financial outlook is uncertain. The public health crisis has resulted in increased costs which are not fully funded in the current year. With uncertainty about the ongoing impact of this and no clarity on the extent to which both central and local funding sources might be affected from next year onward, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term. As such, the Section 151 Officer supports the proposed protocols and the implications will be factored into the Medium-Term Financial Strategy.
15. 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.
16. 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 (HNB) of the Dedicated Schools Grant, there is an overall need for major cost reductions to be found in the high needs block to remove the current operating deficit. 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 in the overall context of the HNB.

Legal implications – Monitoring Officer:

17. 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.
18. The proposed Fair Access Protocols are compliant with the 2014 DfE School Admissions Code.

Public sector equality duty:

19. 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).

Consultation:

20. 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. However, as indicated in the report, no significant changes are proposed and consequently there is no requirement for consultation.

General Decision-Making:

21. 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 and the public sector equality duty.

Best value duty:

22. 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:

23. An Equality Impact Assessment has been completed and is included in Annex 5.
24. 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.
25. 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:

26. 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:

27. 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:

28. 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:

29. The Protocols will be shared with all schools and relevant officers and implemented for 2020/21.
30. The Fair Access Review Group will monitor the effectiveness of the Protocols throughout the year, along with other officers as required.

Contact Officer:

Claire Potier, Service Manager, Admissions and Transport
 claire.potier@surreycc.gov.uk

Consulted:

- Liz Mills, Director for Education, Lifelong Learning & Culture
- Rachel Hickman, Legal and Democratic Services
- Area Education teams
- David Green, Strategic Finance - Children, Families and Learning

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
 - Department for Education guidance on fair access protocols in school admissions
-