

SURREY COUNTY COUNCIL

CABINET MEMBER FOR EDUCATION AND LEARNING

DATE: 25 JULY 2023

**REPORT OF CABINET MEMBER: CLARE CURRAN, CABINET MEMBER
FOR EDUCATION AND LEARNING**

**LEAD OFFICER: LIZ MILLS, DIRECTOR FOR EDUCATION AND
LIFELONG LEARNING**

SUBJECT: FAIR ACCESS PROTOCOL 2023/24

**ORGANISATION STRATEGY PRIORITY AREA: EMPOWERING
COMMUNITIES**



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. The Fair Access Protocol ensures that vulnerable and unplaced children, who are not successful in gaining a place through the normal in-year admissions process, are offered a place at a suitable school within 20 school days. This includes admitting children above the published admission number to schools that are already full.

The proposed Fair Access Protocol for 2023/24 sets out the criteria that the local authority will use to determine which children will be placed under Surrey's Fair Access Protocol and how cases will be considered. It complies with the DfE's School Admissions Code ("the Code") which came into force on 1 September 2021 and with the DfE guidance on fair access that was issued in July 2021 alongside the new Code.

RECOMMENDATIONS:

It is recommended that the Cabinet Member agrees the proposed Fair Access Protocol for 2023/24.

REASON FOR RECOMMENDATIONS:

- The local authority is required to have a Fair Access Protocol ("the Protocol") in place that all schools must participate in.
- The proposed Protocol meets the requirements of the 2021 DfE School Admissions Code and supporting guidance.
- The Protocol will ensure that vulnerable and unplaced children can be placed in school quickly where they are unable to secure a place through the normal in-year admissions procedure.
- When seeking to place a child under the Protocol, no school will be asked to take a disproportionate number of children who have been

permanently excluded from other schools, who display challenging behaviour, or who meet one of the other categories set out in the Protocol.

DETAILS:

1. A copy of the proposed Fair Access Protocol for 2023/24 is attached as Annex 1.
2. The Protocol complies with the statutory requirements of the Code.
3. Surrey's Fair Access Protocol acts as a legal framework behind the operation of fair access. The Protocol has generally worked well, with 165 children to date being referred under the Protocol in 2022/23 (22 primary and 143 secondary). Of these, 35 children were placed in a school directly by the School Admissions team; 33 children were placed through agreement by schools via email instead of needing to hold a panel; and 93 children were placed in school via a fair access panel. At the time of writing, 4 referrals are awaiting placement.
4. Of the 165 referrals to date, 105 referrals (64%) were under category L: children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. 49 referrals (30%) were under category D: children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education.
5. There has been a significant increase in the number of children referred under fair access in 2022/23 – 165 children to date, compared to 80 in the whole of 2021/22. This is largely attributable to the rise in referrals under category L as a result of increased pressure for places in certain areas of Surrey and in certain year groups.
6. No changes are proposed to the Fair Access Protocol for 2023/24, other than dates have been updated from 2022/23.
7. The requirements of the 2021 Code mean that there is little scope to make changes each year to Surrey's Protocol as statutory elements cannot be altered.
8. Schools and Surrey professionals are familiar with the requirements of Surrey's Protocol, although some schools have more exposure to fair access than others, especially at primary level.
9. Surrey's Fair Access Review Group continues to examine the operational effectiveness of the Protocol during each academic year. The Review Group consists of representatives from primary and secondary schools, Pupil Referral Units, local authority Education & Inclusion Service Managers, Area Inclusion Managers and Surrey's School Admissions team. The Assistant Directors are copied into all agendas and meeting

notes and are represented at the Review Group through their service managers. It is intended to review the effectiveness and membership of this group to ensure it continues to add value to the Fair Access process.

10. The Review Group did not identify any specific changes needed to the Protocol for 2023/24 within those areas that could lawfully be changed.
11. The Review Group proposed that the Protocol should only be consulted on with schools biennially in future unless changes were being proposed, to avoid unnecessary consultation on an unchanged Protocol (other than the annual updating of dates). This would mean that the next consultation would take place in 2025 for the 2025/26 Protocol unless changes were proposed for the 2024/25 Protocol. It would still however be intended to seek Cabinet Member approval of the Protocol each year.

CONSULTATION:

12. The draft Protocol for 2023/24 was distributed for consultation on 11 May 2023 via the Schools Bulletin (issue 396) by the School Admissions team. This went to all schools and Pupil Referral Units. Primary and Secondary Phase Councils, the Education and Inclusion Service Managers and the Area Inclusion Managers were also consulted.
13. Consultees were asked the following questions:
 - Q1: Surrey's Fair Access Protocol was updated for 2021/22 to meet the requirements of the new DfE School Admissions Code (September 2021) and the updated DfE guidance on fair access (July 2021). Taking into account that statutory elements of Surrey's Fair Access Protocol cannot be changed, are you in agreement with the wording of the proposed Protocol for 2023/24?
 - Q2: For those sections of Surrey's Fair Access Protocol that could potentially be updated, is there anything you wish to see changed, and why if so?
 - Q3: Since Surrey's Fair Access Protocol must reflect the DfE School Admissions Code, and the DfE guidance on fair access is now clearer, we are proposing to consult on the Protocol every two years instead of annually, unless changes are being proposed. Are you in agreement with this?
 - Q4: Do you have any other comments to make about Surrey's Fair Access Protocol?
14. The closing date for the consultation was 26 May 2023. The School Admissions team received two responses, from a primary and a secondary Headteacher. They were both in agreement with the proposed Protocol and the proposal to consult every two years unless changes were proposed, and the respondents did not make any further comments.

RISK MANAGEMENT AND IMPLICATIONS:

15. The Fair Access Protocol reduces the risk of children being left out of school by ensuring there is a shared responsibility between the local authority and schools to place a child in school within 20 school days where they have been unable to secure a place through the normal in-year admissions process.
16. Once placed in a school, the Protocol ensures that children will be placed on roll as soon as possible, but within no more than five school days, to ensure that no child remains out of school for longer than necessary.
17. The Protocol reduces the risk of undersubscribed schools being asked to admit more than their fair share of children who need to be placed under the Protocol.

Financial and value for money implications:

18. Funding remains available to schools in 2023/24 when admitting pupils permanently excluded from their previous school, 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.
19. In addition, maintained schools and academies will continue to receive Age Weighted Pupil Unit (AWPU) funding for Year 11 pupils placed on roll after 05 October 2023 and before the end of the spring term 2023 under categories D and J of the 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 by schools continuing to receive AWPU funding, it 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 coming under categories D and J are placed under the Protocol.
20. 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.
21. 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. As part of the Council's 'safety valve' agreement, there is an overall need to manage costs and reduce the 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.

Section 151 Officer commentary:

22. Significant progress has been made in recent years to improve the Council's financial resilience and the financial management capabilities across the organisation. Whilst this has built a stronger financial base from which to deliver our services, the increased cost of living, global financial uncertainty, high inflation and government policy changes mean we continue to face challenges to our financial position. This requires an increased focus on financial management to protect service delivery, a continuation of the need to be forward looking in the medium term, as well as the delivery of the efficiencies to achieve a balanced budget position each year.
23. In addition to these immediate challenges, the medium-term financial outlook beyond 2023/24 remains uncertain. With no clarity on central government funding in the medium term, 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 the stable provision of services in the medium term.
24. The Section 151 Officer therefore supports the proposal to approve the fair access protocol.

Legal implications – Monitoring Officer:

25. The 2021 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 under the Protocol, including children excluded from other schools.
26. The proposed Fair Access Protocol reflects the requirements of the 2021 DfE School Admissions Code and is legally compliant.

Public sector equality duty:

27. 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:

28. 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. Whilst no changes have been proposed for the 2023/24 Protocol, schools have nonetheless been consulted on the draft Protocol and invited to make comments if they wish, although only two were received.

General Decision-Making:

29. 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:

30. 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:

31. An Equality Impact Assessment has been completed and is included in Annex 2.
32. There are no negative impacts on any equality group. Placements under the Fair Access Protocol are currently in the region of 165 a year, and as such this Protocol will not affect many people nor have a severe effect on some people.
33. The Fair Access Protocol is 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 this Protocol as they will be placed in school quickly, even if a school is full.

Other implications:

34. 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
Environmental sustainability	No significant implications arising from this report
Public Health	No significant implications arising from this report

Corporate Parenting/Looked After Children implications:

35. 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 normally considered under Surrey’s Fair Access Protocol.

Safeguarding responsibilities for vulnerable children and adults implications:

36. The Fair Access Protocol provides 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:

37. The Protocol will be shared with all schools and relevant officers and implemented for 2023/24.

38. The Fair Access Review Group will monitor the effectiveness of the Protocol throughout the year.

Contact Officer:

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

Consulted:

- Liz Mills, Director for Education & Lifelong Learning
- Carrie Trail, Head of Education
- Amanda Scally, Legal and Democratic Services
- David Green, Strategic Finance - Children, Families and Learning
- Education & Inclusion Service Managers
- Area Inclusion Managers
- All primary and secondary schools and PRUs
- Primary and Secondary Phase Councils
- Fair Access Review Group

Annexes:

Annex 1 – 2023/24 Fair Access Protocol

Annex 2 – Equalities Impact Assessment

Sources/background papers:

- DfE School Admissions Code - September 2021
 - DfE Fair Access Protocols Guidance - July 2021
-