

**SURREY COUNTY COUNCIL****DENISE TURNER- STEWART, CABINET MEMBER FOR  
EDUCATION AND LEARNING DECISIONS****DATE: 26 JULY 2022****LEAD OFFICER: LIZ MILLS, DIRECTOR FOR EDUCATION AND LIFELONG  
LEARNING****SUBJECT: FAIR ACCESS PROTOCOL 2022/23****ORGANISATION** Empowering Communities  
**STRATEGY**  
**PRIORITY AREA:****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 2022/23 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 Department for Education (DfE) 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 2022/23.

**REASON FOR RECOMMENDATIONS:**

- The local authority is required to have a Fair Access Protocol in place that all schools must participate in.
- The proposed Protocol meets the requirements of the 2021 DfE School Admissions Code.
- 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.

<b>DETAILS:</b>
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1. A copy of the proposed Fair Access Protocol for 2022/23 is attached as Annex 1.
2. The Protocol complies with the statutory requirements of the Code.
3. Surrey's Fair Access Protocol has generally worked well, with 80 children to date being referred under the Protocol in 2021/22 (36 primary and 44 secondary). Of these 80 children, 45 children were placed in a school directly by the School Admissions team, and 35 children were placed in school via a fair access panel. Of the 80 children, 41 were asylum seekers or refugees accompanied by their parents. Any **unaccompanied** asylum seeking children are classed as looked after children, who cannot be placed through fair access.
4. As anticipated, Surrey has seen a reduction in the number of children placed under fair access in 2021/22 – 80 children to date, compared to 180 in 2020/21. This is for the following reasons:
  - a change within the Code to the categories of children who are eligible for placement under the Protocol;
  - confirmation within the Code that a child must only be placed through fair access when they have been unable to secure a place through the in-year admission procedures;
  - confirmation within the Code that admission must not be refused on the basis that they may be eligible to be placed via fair access; and
  - clarification within the Code of the circumstances when admission might legally be refused in year, for a year group that is the normal year of entry and a year group that is not (different rules apply).
5. No changes are proposed to the Fair Access Protocol for 2022/23 other than:
  - an additional sentence added to paragraph 5.2 as a reminder that Looked After Children are outside the remit of this Protocol, so the categories of fair access do not apply to them. Paragraph 5.2 references section 10 which gives more detail about Looked After Children.
  - an additional sentence added to paragraph 10.2 to clarify that unaccompanied asylum seeking children are classed as Looked After Children.
  - minor wording changes in paragraphs 7.11 and 7.22 to add clarity;
  - an additional sentence added to paragraph 12.1 to clarify how funding for Year 11 students admitted under the Protocol after the October census will be issued;
  - dates have been updated from 2021/22.
6. There were significant changes made to the 2021/22 Protocol to comply with the new Code, and schools and Surrey professionals have become familiar with these during this academic year.
7. The School Admissions team held a survey on fair access with all schools in the spring term of 2022 to seek schools' views on some of the more operational

elements of the Protocol that were not bound by the statutory requirements of the Code, as well as to seek views on some of the more challenging aspects of the Protocol. This survey followed on from briefings on in year admissions and fair access that the School Admissions team ran for all schools in the autumn term, which were well received.

8. 79 schools responded to the spring term survey. There were various comments on the operation of the Protocol and suggestions for change, although some of these would not be possible because of the statutory requirements of the Code.
9. The School Admissions team presented the initial survey results to the Fair Access Review Group at their March meeting, with more detailed results at the April meeting. 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.
10. The Review Group reflected that the survey with schools did not identify any specific changes needed to the Protocol for 2022/23, which acts as a legal framework behind the operation of fair access.
11. The School Admissions team is formulating an action plan to take forward some of the operational points brought up in the survey responses, and the Review Group will work through this action plan during 2022/23.
12. In addition, the School Admissions team issued Frequently Asked Questions to schools about in year admissions and fair access in June 2022. These sought to address some of the common misconceptions about these areas of admissions; and to clarify what is statutory and where a flexible approach can be applied to the resolution of a case.

#### **CONSULTATION:**

13. The draft Protocol for 2022/23 was distributed on 10 June 2022 by the School Admissions team to all schools and Pupil Referral Units and to the Primary and Secondary Phase councils for consideration. The Education and Inclusion Service Managers and the Area Inclusion Managers were also consulted.
14. This was a 'light touch' consultation which explained that no changes were proposed to the Protocol, although schools were invited to make any individual comments that they wished by 27 June 2022.
15. The School Admissions team received no comments to that consultation.

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

16. 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.

17. 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.
18. 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.

<b>Financial and value for money implications:</b>
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19. Funding remains available to schools in 2022/23 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.
20. In addition, maintained schools and academies will continue to receive Age Weighted Pupil Unit (AWPU) funding for Year 11 pupils placed on roll after 06 October 2022 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 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.
21. 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.
22. 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.

<b>Section 151 Officer commentary:</b>
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23. Although significant progress has been made to improve the Council's financial position, the financial environment remains challenging. The UK is experiencing the highest levels of inflation for decades, putting significant pressure on the cost of delivering our services. Coupled with continued increasing demand and fixed Government funding this requires an increased focus on financial management to ensure we can continue to deliver services within available funding. In addition to these immediate challenges, the medium-term financial outlook beyond 2022/23 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 stable provision of services in the medium term.

24. As such, the Section 151 Officer supports these recommendations to ensure appropriate protocols are in place to ensure vulnerable and unplaced children can be placed in schools quickly outside of the normal admissions process as required.

<b>Legal implications – Monitoring Officer:</b>
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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 has been updated to reflect the new 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 2022/23 Protocol, schools have nonetheless been consulted on the draft Protocol and invited to make comments if they wish, although none have been 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 80 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.

<b>Area assessed:</b>	<b>Direct Implications:</b>
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 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 2022/23.
  38. The Fair Access Review Group will monitor the effectiveness of the Protocol throughout the year.
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**Consulted:**

- Liz Mills, Director for Education & Lifelong Learning
- Jane Winterbone, Assistant Director for Education
- Rachel Hickman, 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 – 2022/23 Fair Access Protocol  
Annex 2 – Equality Impact Assessment

**Sources/background papers:**

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