

13<sup>th</sup> September 2021

Agenda Item: 8

## **REPORT OF THE SERVICE DIRECTOR, EDUCATION, LEARNING AND SKILLS**

### **FAIR ACCESS PROTOCOL STATUTORY CONSULTATION UPDATE**

#### **Purpose of the Report**

1. This report provides an update on the progress of the Fair Access Protocol statutory consultation and the proposed route for agreeing the final Protocol.

#### **Information**

2. Every local authority must have a Fair Access Protocol, and this must be consulted upon and developed in partnership with all schools in its area, as stated in the School Admissions Code, September 2021, Section 3. The previous Nottinghamshire Fair Access Protocol was agreed in February 2019 and requires revision in order to comply with the provisions of the School Admissions Code September 2021.
3. Following agreement at the meeting of the Children and Young People's Committee on 26 July 2021, consultation on an updated Nottinghamshire Fair Access Protocol began on 4 August 2021. The consultation remains open, and the deadline for responses to be received is 19 September 2021.
4. The dates set for consultation were agreed on the basis that the new School Admissions Code was laid before Parliament for 40 days, commencing 13 May 2021, and publication of the final document was not due until this process had completed. It is not reasonable to consult with schools over the summer holiday period and the consultation was extended into September in order to allow them time to consider the proposed changes and respond. Proposed dates were communicated to schools from May 2021 in order to give them notice of the Council's intentions.
5. Notification was received from the Department for Education on 13 July 2021 that the School Admissions Code, effective from September 2021, had been published.
6. *Department for Education; Annex – Frequently asked questions on implementing the new provisions on Fair Access Protocols and admissions priority for children adopted from state care outside of England*, published on 13 July 2021, states 'Local authorities must make changes to their existing Fair Access Protocols in order to give effect to the new provisions

in the 2021 Code, which come into force on 1 September. This means that a new Fair Access Protocol will be operational on 1 September. Due to the timing of the release of the new School Admissions Code it is not possible to meet this deadline and it is necessary for the revised Nottinghamshire Fair Access Protocol to be agreed as soon as is practicable following the deadline for consultation responses.

### **Other Options Considered**

7. The timescale for consultation responses could have been shortened to allow them to be analysed and a final protocol agreed by 1 September 2021. The implication would have been that consultation would only be open for a shortened two week period and this would have fallen entirely during the school holiday period. It was not reasonable to expect schools to consider and respond if this option had been taken, and this would have left the Council open to challenge as stakeholders would not have been given the chance to comment.
8. Due to the need to agree the revised Protocol at the earliest opportunity the analysis of the consultation and the proposed Fair Access Protocol will be presented to Policy Committee on 14 October 2021 for approval. To delay the decision would mean that vulnerable children may not be supported effectively through the Fair Access Protocol as the current protocol does not reflect the provisions of the new Code, potentially leaving the Council open to criticism and potential challenge.

### **Reason/s for Recommendation/s**

9. In order to remain lawful and to ensure that vulnerable children can be supported effectively through the Fair Access Protocol, agreement of a revised Protocol is needed at the earliest opportunity following the conclusion of the consultation period and analysis of responses.

### **Statutory and Policy Implications**

10. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Financial Implications**

11. There are no financial implications arising directly from this report.

### **Safeguarding of Children and Adults at Risk Implications**

12. It is necessary to have an operating Fair Access Protocol in place in order to ensure that vulnerable children are allocated school places quickly and are not at risk as a consequence of spending time missing from education.

## RECOMMENDATION/S

- 1) That Policy Committee be requested to consider the consultation response and the revised Fair Access Protocol at its meeting on 14 October 2021 in order that it can be effective from that date.

**Marion Clay**  
**Service Director, Education, Learning and Skills**

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### **Constitutional Comments (ELP 25/08/21)**

13. The recommendations fall within the delegation to Children and Young People's Committee by virtue of its terms of reference.

### **Financial Comments (MDN 19/08/21)**

14. There are no financial implications arising directly from this report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

[Department for Education; School Admissions Code, September 2021](#)

[Department for Education; Fair Access Protocols, July 2021](#)

Department for Education; Annex – Frequently asked questions on implementing the new provisions on Fair Access Protocols and admissions priority for children adopted from state care outside of England, published on 13 July 2021

[Nottinghamshire County Council's consultation on a revised Fair Access Protocol](#)

### **Electoral Division(s) and Member(s) Affected**

All.

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