

5 November 2013		ITEM 4
Children's Services Overview & Scrutiny Committee		
Admissions and Appeals		
Portfolio Holder: Councillor J Kent – Leader of the Council		
Wards and communities affected: All	Wards and communities affected: All	
Accountable Head of Service: Carmel Littleton, Director of Children's Services		
Accountable Director: Carmel Littleton, Director of Children's Services		
This report is Public		
Purpose of Report: To report on the efficacy of admission and admission appeal arrangements in an evolving economy of multiple admission authorities.		

1. RECOMMENDATIONS:

- 1.1 That the contents of the report be noted.**

2. INTRODUCTION AND BACKGROUND:

- 2.1 This report describes the effects on co-ordinated admission arrangements and admission appeal arrangements of the increasing number of admission authorities, together with the consequential impact on parents' and carers' access to school places and the steps taken by the council to facilitate proper and timely access to school places.

3. ISSUES

- 3.1 Responsibility for determining admissions arrangements, making admissions decisions and organising appeals**

3.1.1 These are summarised in the following table:

Type of school	Determination of arrangements, admission decisions and appeals arrangements
Academy	Academy trust (admission authority)
Community	Local authority (admission authority)
Foundation	Governing body (admission authority)
Free school	Academy trust (admission authority)
Voluntary aided	Governing body (admission authority)
Voluntary controlled	Local authority (admission authority)

3.1.2 In all cases the Schools Adjudicator deals with complaints about published admission arrangements, but has no jurisdiction to deal with complaints about failure properly to operate them.

3.2 Co-ordination of normal rounds at Reception, Y2/3 and Y6/7 - The School Admissions Code requirements

3.2.1 The School Admissions Code 2012 requires local authorities to co-ordinate admissions to schools in the normal rounds. These are principally admission to reception and Y7, but also include transfer from infant to junior schools and some admissions to studio schools. Paragraph 2.20 of the Code is included in Appendix 1.

3.2.2 The Thurrock Council website carries composite prospectuses for primary and secondary admissions and the required scheme for the co-ordination of admissions. Information in the annual return to the DfE for the 2012/13 round for 2013 admission to secondary schools is at Appendix 2. There is no equivalent data collection for reception admissions, although plans for this are being developed.

3.2.3 The council's admissions officers offer six briefings to prospective parents each year. These sessions are designed to help those applying for school places navigate their way through the increasingly complex admissions processes that result from the mixed economy of schools. The aim is to help parents and carers maximise their chances of securing a place at one of their preferred schools. A key part of the council's modernisation agenda is to increase the use of online business transaction facilities. Council data tells us that 84% of Thurrock residents have internet access at home. By contrast, in the primary and secondary admission rounds for September 2013 entry to school, 87% of both primary and secondary applicants applied online. The 3 percentage point difference can probably be explained by the younger age profile of parents and carers compared to the whole Thurrock population and the likelihood that the presence of children in the home will to some extent drive the acquisition of domestic IT. Notwithstanding, the take-up rate for online application represents a significant step forward.

3.3 In-year co-ordination

- 3.3.1 The School Admissions Code 2012 removes the requirement on local authorities to co-ordinate in-year admissions from September 2013. It does not prohibit them from doing so. Paragraphs 2.21 and 2.22 - reproduced at Appendix 1 - place duties on local authorities and own admission authority schools that are tantamount to co-ordination and which require a substantial degree of co-operation between local authorities and admission authorities in order to make in-year admissions arrangements work effectively for parents and children. Any fragmentation of the co-ordinated admission arrangements that were, until September 2013, compulsory would mean:
- a degraded service for parents seeking school places
 - that the families most adversely affected will be those facing the greatest hardship and possessing the least emotional and other resources to cope with the added complexity of having to make multiple applications
 - an undermining of the ability of local authorities to fulfil their safeguarding duties which they carry out on behalf of their communities
 - the placing of an unnecessary obstacle to ensuring that children with no school place are admitted quickly
 - that it would be easier for those wishing to avoid registering their children at a school to go unnoticed
- 3.3.2 The Code stipulates that parents must be able to apply for any school for which the local authority is not the admission authority on a form provided by the local authority. In line with the Code the Thurrock Council website offers a suitable form for parents to complete when applying for a place for their child at any school. The Admissions Service has recently extended the online application system to those making in-year applications so they can now be done either on-line or on paper. Alongside it there is guidance for parents about in-year admissions with a specific emphasis on the disadvantages of moving children from one school to another; this is aimed at reducing turbulence in Thurrock schools which is currently at a high level. Details of in-year applications made in 2012-2013 are shown in Appendix 3.
- 3.3.3 Any Thurrock parent can currently apply for a place at any time to any state-funded Thurrock school outside the normal admissions round on the Thurrock form. This maintains the safeguarding benefits of co-ordinating the application stage of the process whilst allowing those own admission authority schools who wish to do so, to issue the outcome direct to the applicant and to inform the LA accordingly. It also enables Thurrock better to fulfil its statutory responsibilities to pupils not in school.
- 3.3.4 Because not all local authorities have continued their in-year co-ordination beyond September 2013 Thurrock residents applying to schools outside Thurrock are now confronted with an array of different arrangements depending upon which local authority their preferred schools are in and will not necessarily be able, as they have in the past, to express all their preferences on one form.

3.3.5 All Thurrock residents can apply either directly to Thurrock own admissions authority schools or via the council's admissions service for a place at an own admissions authority school. In all cases they must apply through Thurrock as the admission authority if they are seeking a place at a Thurrock community or voluntary-controlled school.

3.4 Fair Access

3.4.1 The School Admissions Code sets out the requirement for local authorities to have fair access protocols. The requirement for the protocol to be agreed with the majority of schools in its area sits alongside a further requirement that all schools in the area participate. This is covered in paragraphs 3.9 and 3.11 reproduced in Appendix 1.

3.4.2 Whilst the protocol has to be agreed by the majority of schools, all schools are required to participate. Thurrock's fair access protocol has been agreed with all secondary schools – not just the majority required by the code - and was the subject of detailed consultation with primary head teachers and principals. The Thurrock Fair Access Protocol forms Appendix 5 to this report and includes *inter alia* terms of reference for the Inclusion Panel. Applications on behalf of children who have no secondary school place and who are experiencing difficulty in securing a school place are managed through the Inclusion Panel.

3.5 Appeals

3.5.1 School admission appeals are the subject of statutory guidance issued by the DfE in February 2012. The School Admission Appeals Code imposes mandatory requirements and includes guidelines that apply to school admission authorities, governing bodies, local authorities and admission appeal panels. These bodies have a statutory duty to comply with the relevant provisions of the Code. Academies are required by their funding agreements to comply with the School Admission Appeals Code and the law relating to admissions, although the Secretary of State has the power to vary this requirement where there is demonstrable need.

3.5.2 When a community school converts to academy status, responsibility for managing appeals transfers from the council as admission authority to the academy trust. Guidance says that schools converting to academy status should have appeals arrangements in place at the point of conversion. In practice this rarely happens and in many cases pragmatic solutions have had to be adopted in the interests of achieving a timely resolution for parents. Thus, for example, where an admission decision formally made by the council prior to conversion has been the subject of an appeal hearing post conversion, the council has acted as respondent. In some cases newly established academies have engaged council teams to provide both clerking and case preparation and presentation on a traded basis. Other academies have decided to undertake these functions themselves and some have engaged other organisations.

- 3.5.3 The consequences of these changes for parents are that they have to be clear about where their appeal should be lodged and that they need to have regard to the differing requirements of the schools whose admission decisions they wish to challenge. Despite the availability of clear guidance on this in council admissions literature, letters and briefings it remains a difficult and complex area for many people. The expectation persists in many quarters that the council will handle all appeals, whilst the Code makes it clear that it cannot outside of a traded service agreement.
- 3.5.4 Statutory admission appeals is an area where the council's role as parent advocate is likely to increase significantly as it seeks to ensure that all admission authorities comply with the requirements of the codes, at the same time as it offers traded services to academies supporting them in the defence of appeals.

3.6 Ensuring fairness and referrals to the Schools Adjudicator

- 3.6.1 The School Admissions Code places duties on local authorities to report instances of non-compliance with its requirements and those of the relevant legislation. Paragraph 3.2 is included in Appendix 1. Local authorities are under an obligation to make a referral and have no discretion in the matter once they are of the view or suspect that determined arrangements are unlawful. To date Thurrock has made referrals in relation to one primary academy and one secondary academy. The objections contained therein were upheld in every instance in both referrals.
- 3.6.2 An area of emerging difficulty lies in the fact that the Schools Adjudicator has jurisdiction that allows investigation into published arrangements that appear to fall short of the Code's requirements but is unable to impose any sanction or requirement for corrective action to be taken in cases where admission authorities fail to implement their published arrangements properly. The Schools Adjudicator is, for instance, unable to consider a complaint from a local authority about an admission authority's failure in this respect with the result that any parent so disadvantaged has necessarily to rely on the statutory appeals process. Independent appeals panels must be set up by own admission authority schools to hear appeals against their admissions decisions, but there is a degree of scepticism on the part of some parents about the extent to which such panels can be truly independent.

3.7 Managing admissions to oversubscribed schools

- 3.7.1 The key point about admission arrangements so far as the Code is concerned is that they must be transparent and that admission authorities must not seek information from applicants that does not relate specifically to the published admission arrangements. This is set out in paragraph 1.9 included in Appendix 1 to this report.
- 3.7.2 Thurrock Council's published arrangements for community and voluntary controlled schools have proven to be robust, effective and code compliant. They reflect all the mandatory requirements of the Code, rely on some of the optional permitted elements of the Code and do not contain any that are not

permitted by the Code. Some primary phase academies have so far chosen to retain the Thurrock criteria in their entirety, while others, in moving to the publication of their own discrete arrangements, have retained the major elements.

3.8 Catchment areas

3.8.1 Catchment areas are an optional element of published admission arrangements. The Code permits their use, but does not require it. They serve two primary purposes. One is as a place planning tool to seek to ensure that there are sufficient school places related to child populations resident in coherent geographical areas. The other is as a means of affording some degree of priority to local children.

3.8.2 As schools convert to academy status and start to define their own catchment areas as part of their oversubscription criteria without reference to the local authority's pupil place planning function, the overall co-ordination of provision becomes more difficult and any associated security for parents making applications is removed.

3.8.3 There is now little co-ordination of community school catchment areas with those of other schools outside of Chafford Hundred where the two primary community schools and one primary academy share a catchment area.

3.9 The law on registering a child at school and attendance at school - guidance and legislation

3.9.1 Local authorities have a duty to satisfy themselves that children are in the school system or receiving education otherwise. If it comes to the attention of a local authority that a child is not receiving a suitable education either by regular attendance at school or otherwise than at a school, the LA has a duty under section 437 of the Education Act 1996 to serve a notice or a school attendance order to the parent. The notice requires the parent to satisfy the LA that the child is receiving a suitable education while the order requires the parent to register the child at a named school. Thus 437 deals with a failure to ensure that a suitable education is being received in which case the remedy is for the LA to issue a school attendance order requiring the parent to register the child, and 444 deals with non-attendance of a registered pupil. An offence occurs if the parent fails to comply with the school attendance order requiring registration at a named school. Section 443 refers and makes clear that where a school attendance order has been issued requiring registration at a named school and the parent fails to comply then the parent may be prosecuted. Sections 437, 443 and 444 are set out in Appendix 4.

4. CONSULTATION

None required.

5. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

5.1 The council has a statutory duty to ensure that it provides sufficient school places for all children and young people within the borough and that there is a clear and easily accessible process for gaining admission to a school, whether or not it is the admission authority for the schools in question.

6. IMPLICATIONS

6.1 Financial

Implications verified by: **Kay Goodacre**
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 There are no direct financial implications within the report.

6.2 Legal

Implications verified by: **Lucinda Bell**
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 None arising from this report.

6.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
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 There is no direct diversity implication noted in this report.

6.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

None specifically

BACKGROUND PAPERS USED IN PREPARING THIS REPORT:

- School Admissions Code, DfE, February 2012
- School Admission Appeals Code, DfE, February 2012

APPENDICES TO THIS REPORT:

- Appendix 1 – School Admissions Code paragraphs referenced in the report
- Appendix 2 – DfE return on secondary school preference data
- Appendix 3 – In-year applications made in 2012-2013
- Appendix 4 – Sections 437, 443 and 444 of the of the Education Act 1996
- Appendix 5 - Thurrock Fair Access Protocol

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Appendix 1

School Admissions Code paragraphs referenced in the report

School Admissions Code paragraph 1.9

*It is for admission authorities to formulate their admission arrangements but they **must not**:*

- a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements;*
- b) take into account any previous schools attended, unless it is a named feeder school;*
- c) give extra priority to children whose parents rank preferred schools in a particular order, including 'first preference first' arrangements;*
- d) introduce any new selection by ability;*
- e) give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority;*
- f) give priority to children according to the occupational, marital, financial or educational status of parents applying (though children of staff at the school may be prioritised in arrangements);*
- g) take account of reports from previous schools about children's past behaviour, attendance, attitude or achievement, or that of any other children in the family;*
- h) discriminate against or disadvantage disabled children or those with special educational needs;*
- i) prioritise children on the basis of their own or their parents' past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination);*
- j) in designated grammar schools that rank all children according to a pre-determined pass mark and then allocate places to those who score highest, give priority to siblings of current or former pupils;*
- k) in the case of schools with boarding places, rank children on the basis of a child's suitability for boarding;*
- l) name fee-paying independent schools as feeder schools;*
- m) interview children or parents. In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place. Boarding schools may interview children to assess their suitability for boarding;*
- n) request financial contributions (either in the form of voluntary contributions, donations or deposits (even if refundable)) as any part of the admissions process – including for tests; or*

o) request photographs of a child for any part of the admissions process, other than as proof of identity when sitting a selection test.

School Admissions Code paragraph 2.20

*Each year all local authorities **must** formulate and publish on their website a scheme by **1 January** in the relevant determination year to co-ordinate admission arrangements for all publicly funded schools within their area.*

School Admissions Code paragraphs 2.21 and 2.22

*2.21 There is no requirement for local authorities to co-ordinate in-year applications for the offer year 2013/14 and all subsequent years, but they **must** provide in the composite prospectus how in-year applications can be made and will be dealt with. Local authorities **must**, on request, provide information to a parent about the places still available in all schools within its area, and a suitable form for parents to complete when applying for a place for their child at any school for which they are not the admission authority. Any parent can apply for a place for their child at any time to any school outside the normal admissions round.*

*2.22 Own admission authority schools **must**, on receipt of an in-year application, notify the local authority of both the application and its outcome, to allow the local authority to keep up to date figures on the availability of places in the area. The admission authority **must** also inform parents of their right to appeal against the refusal of a place.*

School Admissions Code paragraph 3.2

*Local authorities **must** refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful.*

School Admissions Code paragraph 3.9

*Each local authority **must** have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that - outside the normal admissions round - unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. In agreeing a protocol, the local authority **must** ensure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour. The protocol **must** include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.*

School Admissions Code paragraph 3.11

*All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly.*

Appendix 2

DfE return on secondary school preference data

Regulations Schedule 2 paragraph	Field	Description	Calculation checks
1	DFE Number	3 digit number allocated to each local authority with education responsibilities	883
2	LA Name	Name of local authority	Thurrock
3	Report date	1 March (or the next working day where 1 March is not a working day)	1 March
n/a	National Curriculum year of admission	The National Curriculum year to which the data relates. This will be Year 7 for most local authorities, but will be different for local authorities with a 3 tier school system. Where there is more than one year of admission, e.g. to middle school and upper school, a separate report is required for each year.	Year 7
4	Total home applications	Total number of applications received in respect of children living in the local authority area, including applications for schools in other local authority areas. This is a count of the number of applications received in hard copy or online. Do not count each preference as a separate application. Duplicate applications, replacement applications, amended forms and forms from two different applicants in respect of one child should be resolved and counted as a single application. Applications that are withdrawn before an offer is made should not be counted. Children with an SEN statement that names a school should not be included in this return. Do not count any applications which were treated as late applications. However, it is acceptable to include any applications which arrived after the closing date but which the local authority treated in the same way as on time applications.	1753
5	Online applications	The number of applications in 4 above that were submitted online.	1528
6	Places available	Number of admission places available in home local authority secondary schools (i.e. the total of the published admission numbers for all secondary schools in the local authority area) for the admission year being reported upon.	1912
7a-f	One preference, two preferences etc	Number of home applicants expressing one preference, two preferences etc. Where a local authority offers fewer than 6 preferences, N/A should be entered in the fields which are not relevant e.g. if an authority offers three preferences, N/A should be entered in the fields for 4, 5 and 6 preferences. Where no parent expressed a particular number of preferences, 0 should be entered in the relevant field e.g. if no parents expressed only one preference 0 should be entered in the field for one preference.	1 = 656 2 = 341 3 = 352 4 = 152 5 = 71 6 = 181

8a-f	First preference offers	Number of applicants offered a place at their first preference school, second preference school etc. Children with an SEN statement that names a school should not be included in this return. As above, enter N/A as appropriate where authority offers fewer than 6 preferences and 0 where no parent was offered a particular preference.	1 st Pref Offers – 1477 2 nd Pref Offers – 135 3 rd Pref Offers – 61 4 th Pref Offer – 20 5 th Pref Offer – 6 6 th Pref Offer - 3
9	Applicants without an offer corresponding to any preference	Number of home applicants for whom offers could not be made for any preferences. This number should not include offers made to parents who did not submit an application.	51
10	Alternative offers	Number of home applicants falling within paragraph 9 to whom an alternative offer has been communicated by the authority. Do not include any offers made to parents who did not submit an application in this return. If the response to question 9 is 0, N/A should be entered in this field. If the local authority does not make alternative offers on national offer day, this field should also be entered with N/A.	51
11	Vacant places	Number of admission places available in home authority secondary schools on report date. This is the number of places remaining in home authority schools that are NOT potentially filled through an offer to any pupils and should take account of offers made to applicants resident outside the home authority area. This number is not based on acceptance of the places or actual attendance.	284
12	Total home LA offers	Number of home applicants for whom an offer was made in a school located in the home LA area. Do not include offers made to parents who did not submit an application.	1512
13	Total other LA offers	Number of home applicants for whom an offer was made in a school located in another LA area. Do not include offers made to parents who did not submit an application.	241

Appendix 3

In-year applications made in 2012-2013

Year Group	Return from elective home education	Late reception application	Moved to England	Moved to Thurrock	Moved within Thurrock	Moving from Thurrock	Parental decision to change school within Thurrock	Waiting list only	Totals
Reception	0	25	9	31	6	8	8	111	198
NC Year 1	0	4	21	60	42	12	43	64	246
NC Year 2	0	0	18	56	19	11	43	20	167
NC Year 3	0	2	12	43	28	6	27	16	134
NC Year 4	0	0	17	36	15	9	31	31	139
NC Year 5	0	0	12	27	19	9	18	6	91
NC Year 6	2	0	18	21	14	7	10	9	81
NC Year 7	1	0	3	10	3	3	10	44	74
NC Year 8	0	0	17	30	5	5	35	15	107
NC Year 9	2	0	15	31	5	7	38	4	102
NC Year 10	1	0	14	28	2	5	15	2	67
NC Year 11	0	0	15	16	0	3	7	2	43
Grand Total	6	31	171	389	158	85	285	324	1449

Appendix 4

Sections 437, 443 and 444 of the of the Education Act 1996

437 School attendance orders.

(1) If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.

(2) That period shall not be less than 15 days beginning with the day on which the notice is served.

(3) If—

(a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and

(b) in the opinion of the authority it is expedient that the child should attend school,

the authority shall serve on the parent an order (referred to in this Act as a “school attendance order”), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.

444 Offence: failure to secure regular attendance at school of registered pupil.

(1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.

443 Offence: failure to comply with school attendance order.

(1) If a parent on whom a school attendance order is served fails to comply with the requirements of the order, he is guilty of an offence, unless he proves that he is causing the child to receive suitable education otherwise than at school.

(2) If, in proceedings for an offence under this section, the parent is acquitted, the court may direct that the school attendance order shall cease to be in force.

(3) A direction under subsection (2) does not affect the duty of the local education authority to take further action under section 437 if at any time the authority are of the opinion that, having regard to any change of circumstances, it is expedient to do so.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Appendix 5

Thurrock Fair Access Protocol

1 Introduction

This fair access protocol, agreed with the majority of schools in the area ensures that - outside the normal admissions round - unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. In operating the protocol, the local authority agrees to ensure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour. The protocol also sets out how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.

2 Legislation

The Education and Inspections Act 2006 introduced a requirement for each local authority to have in place an In Year Fair Access Protocol by September 2007. Further guidance about this requirement is provided in the *School Admissions Code* published on 1 February 2012 and in *Fair Access Protocols : Principles and Process* Departmental Advice DfE November 2012.

3 Guidance

The School Admissions Code Paragraphs 3.9 -3.15 sets out the principles and process of fair access protocols which must be in place in all local authorities. The relevant sections of the code are set out below.

*3.9 **Fair Access Protocols** - Each local authority **must** have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that - outside the normal admissions round - unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. In agreeing a protocol, the local authority **must** ensure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour. The protocol **must** include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.*

3.10 The operation of Fair Access Protocols is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a school place under in-year admission procedures.

3.11 All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

3.12 Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it **must** refer the case to the local authority for action under the Fair Access Protocol (Where in the case of an Academy it cannot agree with the local authority over admitting a child, only the Secretary of State can direct the Academy to admit the child). This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. The use of this provision will depend on local circumstances and **must** be described in the local authority's Fair Access Protocol. This provision will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs naming the school in question, as these children **must** be admitted.

3.13 Admission authorities **must not** refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.

3.14 A Fair Access Protocol **must not** require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school.

3.15 The list of children to be included in a Fair Access Protocol is to be agreed with the majority of schools in the area but **must**, as a minimum, include the following children of compulsory school age who have difficulty securing a school place:

- a) children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
- b) children who have been out of education for two months or more;
- c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;
- d) children who are homeless;
- e) children with unsupportive family backgrounds for whom a place has not been sought;
- f) children who are carers; and
- g) children with special educational needs, disabilities or medical conditions (but without a statement).

4 Protocol

This protocol has regard to the School Admissions Code. It defines Thurrock schools as a community of educators who will take responsibility for admitting pupils who may have difficulty securing a school place outside the normal admissions round. It is designed to maximise learning opportunities such that children deemed hard to place are not disadvantaged or denied opportunity by ensuring that:

1. All schools will participate;
2. Schools will admit pupils who apply for an available place under normal admission arrangements in compliance with the School Admissions Code;
3. In order to facilitate timely access to school for a child without a school place, where necessary, all schools from time to time will exceed their published admission number;
4. All schools are expected to respond to requests for admission under the Fair Access Protocol within seven calendar days in order that there is no undue delay;
5. Schools managing their own admissions notify the local authority of any pupils whom they are refusing a place;
6. Schools will seek to achieve a fair and reasonable distribution of hard to place pupils on the basis of contextual data supplied to it by the LA;
7. Account is taken of the views of the child where feasible to do so;
8. The parental preference of school choice will be noted as part of the process however this is not a determining factor under Fair Access.
9. Schools comply with the statutory guidance limiting the information that can be used in reaching an admission decision to that which is required to assess the application against the admission criteria;
10. The principle that the school place is identified first, and the planning/resources to support placement follow is adhered to;
11. No child remains without a school place for more than 20 school days;
12. All schools play their part as a community of educators to secure speedy access to places so that the time that any child, including pupils with high need, spends out of school is minimised
13. So far as possible there is an equitable distribution of pupils with challenging behaviour who move into the area during the school year;
14. All schools play their part in the admission of pupils with additional and/or high needs throughout the school year;
15. Vulnerable children and young people who are not on the roll of any school are placed quickly, with appropriate reintegration programmes and support that will prepare them for success in learning and in the school community;
16. Children and young people whose needs are such that admission to a mainstream school is not realistic within 20 school days are placed in alternative provision with a view to reintegration.
17. The LA provides high-quality contextual information to aid decision making.

5 Pupils covered by the protocol

1. looked after children and children previously looked after
2. permanently excluded pupils

3. pupils subject to managed moves or requests for managed moves
4. children with a history of violence or serious behaviour problems where a risk assessment supports the view that an alternative mainstream placement would be successful
5. pupils attending PRUs awaiting reintegration to mainstream
6. children from the criminal justice system who need to be reintegrated into mainstream education;
7. pupils withdrawn from school by their family following fixed term exclusions and unable to find another place
8. children who have been out of education for more than 20 school days;
9. children of Gypsies, Roma, Travellers, refugees and asylum seekers;
10. children who are homeless;
11. children with unsupportive family backgrounds for whom a place has not been sought;
12. children who are carers; and
13. children with special educational needs, disabilities or medical conditions (but without a statement).
14. children on the Child Protection Register
15. long term non-attenders
16. children withdrawn from school for Elective Home Education whose parents are unable to provide suitable education (these will in most cases be re-directed to their original school, with the expectation that they will be re-admitted under the protocol, over number if necessary)
17. children in need
18. children with a CAF
19. young offenders
20. children for whom English is not their first language
21. Children in Year 11 where there are complex needs due to difficulties in matching up an appropriate curriculum offer taking into account their schooling to date.

6 Delivery

For secondary schools in Thurrock the normal means of considering cases under the fair access arrangements and principles set out in the School Admissions Code 2012 will be through the Inclusion Panel. The Inclusion Panel's terms of reference are set out in Appendix 1.

For primary age pupils the protocol will be operated by a separate process with a small panel with Primary Head teacher representation from the Thurrock Primary Headteacher Association. (TPHA)

7 Timing / Operation

The operational arrangements for the Secondary Inclusion Panel are set out in the Inclusion Panel Terms of Reference Appendix 1.

In line with DfE advice set out in *Fair Access Protocols : Principles and Process Departmental Advice* DfE November 2012, the following timings apply to this protocol.

It is expected that all parties will act with a sense of urgency to identify a school place for any child who has had difficulty securing one or who falls under the Fair Access Protocol.

All schools, including Academies, are expected to respond to requests by the Inclusion Panel to admit a child under Fair Access Protocols within seven calendar days.

Pupils are expected to be allocated school places and attending school no later than 15 days after the school has been identified through the Protocol.

It is expected that in the vast majority of cases treated under this Fair Access Agreement the school will agree to this request. In the event of a school not agreeing to the request from the Inclusion Panel the following process set out in the DfE Guidance 2012 shall apply.

Before deciding to issue a direction to a voluntary aided or foundation school, the local authority will consult the governing body of the school, the parent, and the child, if they are over compulsory school age. If following this consultation the local authority decides to direct, it will inform the governing body and head teacher of the school. The Local Authority will do the same when considering requesting a direction for a child to be admitted at an Academy through the Fair Access Protocol.

The governing body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 calendar days. Similarly, it is expected that an Academy will agree a starting date for the child or set out its reasons for refusal in writing to the local authority within 15 calendar days (providing contact details to cover any approaching bank holiday or holiday periods).

If an Academy has not agreed a start date for the child within 15 calendar days, the local authority can apply for a direction from the Secretary of State via the Education Funding Agency who acts on his behalf in these cases.

In these circumstances the Local Authority will follow the guidance on seeking a direction from the Secretary of State set out in Appendix 2 taken from *Fair Access Protocols : Principles and Process Departmental Advice* DfE November 2012

8 LA support

The LA will make every effort to ensure multi-disciplinary/multi-agency support where appropriate to support the admission of vulnerable pupils. In high need cases, so far as practicable; multi-disciplinary/multi-agency planning should take place prior to admission.

9 Monitoring and evaluation

The Protocol will be reviewed annually.

The speed and effectiveness of placement of vulnerable pupils who were deemed hard to place will be monitored and evaluated by the LA.

Annex 1 - Thurrock Fair Access Protocol

Thurrock Inclusion Panel (Secondary)

Terms of Reference

Brief

To determine under the terms of the Thurrock Fair Access Protocol school placements and necessary support arrangements for hard to place pupils.

Definition of hard to place

A hard to place pupil is defined in the Thurrock Fair Access Protocol (which in turn has regard to the minimum requirements set out in the School Admissions Code) as follows:

- looked after children and children previously looked after
- permanently excluded pupils
- pupils subject to managed moves or requests for managed moves
- children with a history of violence or serious behaviour problems where a risk assessment supports the view that an alternative mainstream placement would be successful
- pupils attending PRUs awaiting reintegration to mainstream
- children from the criminal justice system who need to be reintegrated into mainstream education;
- pupils withdrawn from school by their family following fixed term exclusions and unable to find another place
- children who have been out of education for more than 20 school days;
- children of Gypsies, Roma, Travellers, refugees and asylum seekers;
- children who are homeless;
- children with unsupportive family backgrounds for whom a place has not been sought;
- children who are carers; and
- children with special educational needs, disabilities or medical conditions (but without a statement).
- children on the Child Protection Register
- long term non-attenders
- children withdrawn from school for Elective Home Education whose parents are unable to provide suitable education (these will in most cases be re-directed to their original school, with the expectation that they will be re-admitted under the protocol, over number if necessary)
- children in need
- children with a CAF
- young offenders
- children for whom English is not their first language

Membership

- All secondary phase Head Teachers
- Strategic Lead – Learner Support
- Headteacher of the Pupil Support Service
- Senior Access and Inclusion Officer
- Head of Admissions

and, by invitation where relevant to case(s) under consideration:

- Social Care
- Headteacher Virtual School for Looked After Children
- Youth Offending Team
- Police

Frequency of meetings

3 weekly

Servicing of Panel

- The local authority will provide the clerk and chair.
- Minutes will be taken recording decisions taken
- Case papers will be made available in advance

Substitutes

Panel members may nominate substitutes

Nominated substitutes must be authorised to make admission and expenditure decisions for their school or service. This is to ensure that decisions affecting children's learning opportunities can be taken in the meeting and are not delayed while authority is sought subsequently.

Process

1. There will be the facility for a pre-meeting 30 minutes before the scheduled meeting time for emergency cases determined by Access and Inclusion officer.
2. Late submissions will be accepted only if not to do so would risk failure to meet a statutory deadline or otherwise put the child, admission authority or council at risk.
3. Electronic papers will made available in advance, 5 working days, of the meeting to panel members.
4. Cases will be presented by the relevant officer, usually the Senior Access and Inclusion Officer.
5. At the meeting a collective decision will be reached in respect of each case submitted.

6. Where a collective decision has not been reached within the meeting, one of the following actions will be agreed.
 - Further information is sought and a decision is taken by the Chair to seek a place at the Pupil Referral Unit or to return to the Inclusion Panel for a school place decision.
 - A school place is requested under the Fair Access Protocol by the Chair of the Meeting.
7. A formal record of decisions is kept with reasons.
8. Details of any cases where schools have not agreed to places under the Fair Access Protocol and the consequent actions taken by the Local Authority in relation to this will be reported to the Inclusion Panel.

Monitoring

Data will be collected and reported to panel.

Any chair's actions will be reported termly.

Venue

Culver Centre

Confidentiality

- panel discussions are confidential.
- papers will be shredded and associated electronic files deleted.
- master files will be retained by LA

Annex 2 - Thurrock Fair Access Protocol

The process for requesting that the Secretary of State direct an Academy to admit a child

(*Fair Access Protocols: Principles and Process; Departmental Advice DfE November 2012*)

- Local authorities and Academies are expected to mediate between themselves before a request is made to the Secretary of State to direct an Academy to admit a child.
- Where a local resolution cannot be found, it is the responsibility of the local authority and the Academy to document the case for and against admission.
- When reviewing an Academy direction case, the Education Funding Agency will act on behalf of the Secretary of State to consider whether due process has been followed in applying the provisions of the Fair Access Protocol.
- In requesting a direction from the Secretary of State, the local authority must provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner, the Academy's reasons for refusal and the local authority's response.
- The local authority should send the information using the attached template to the Education Funding Agency. On receipt of a request to direct, the Education Funding Agency will inform the school that it has received a request for a direction. The letter will request that the Academy provide any evidence other than that already received that the process has not been properly applied within seven calendar days.
- Where the Secretary of State is asked to consider a direction he will make that decision on the basis of the papers provided, taking into account:
 - whether the local Fair Access Protocol has been applied appropriately;
 - the arguments of the Academy and local authority, whether the authority has considered the arguments for refusal and why it still considers the Academy to be the appropriate provision for the child;
 - whether the Academy has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other schools