

Birmingham City Council

Report to Cabinet

27th July 2021



Subject: PROPOSED IN-YEAR VARIATION TO ADMISSION ARRANGEMENTS FOR COMMUNITY AND VOLUNTARY CONTROLLED SCHOOLS AND TO THE CO-ORDINATED SCHEME 2021/22 AND 2022/2023 AND APPROACH TO THE FAIR ACCESS PROTOCOL

Report of: Kevin Crompton
Interim Director of Education and Skills

Relevant Cabinet Member(s): Cllr Jayne Francis - Education, Skills and Culture
Cllr Kate Booth - Children's Wellbeing

Relevant O&S Chair(s): Cllr Narinder Kaur Kooner - Education and Children's Social Care

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 009043/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 The new 2021 School Admissions Code (the Code) includes several changes focused on in-year admission processes, including the Fair Access process.
- 1.2 A significant change as regards formal admission arrangements requires children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted, to be given equal first priority in admission arrangements alongside looked after children (LAC) and children who were previously looked after by English local authorities (PLAC).
- 1.3 The new code also has implications for Birmingham's Fair Access Protocol and Co-ordinated Scheme. Without the variation to the, admission arrangements that have already been determined they will no longer comply with the Code from 1st September.
- 1.4 It is thus expected that admission authorities hold a meeting before 31 August 2021 to determine the necessary variations to admission arrangements for 2021/2022 and 2022/2023. Variations should come into effect on 1 September 2021.
- 1.5 The changes to the Code in respect of IAPLAC also impact on Birmingham's Co-ordinated Scheme which it is proposed to vary to mirror the changes in the admission arrangements.
- 1.6 The purpose of the report is to agree a variation to the admission arrangements for community and voluntary controlled schools for the academic year 2021/2022 and 2022/2023 (**Appendices 1A and 1B**) respectively, to agree the same variation to the Co-ordinated Scheme for the academic year 2021/2022 and 2022/2023 (**Appendices 2A and 2B**) and to note the approach proposed as regards the Fair Access Protocol.

2 Recommendations

- 2.1 That Cabinet approves:
 - 2.1.1 The varied admission arrangements for community and voluntary controlled schools for the academic year 2021/2022 and 2022/2023, as set out in **Appendix 1A and 1B**.
 - 2.1.2 The varied Co-ordinated Scheme for the academic year 2021/2022 and 2022/2023, as set out in **Appendix 2A and 2B**.
- 2.2 That Cabinet notes:
 - 2.2.1 The changes made to Birmingham's Fair Access Protocol by way of an addendum, identifying the legal requirements of the new Code as they pertain to Fair Access and set out in **Appendix 3** and the intention to consult on these and further changes with schools.

2.3 That Cabinet approves:

- 2.3.1 The delegation of authority to the Cabinet Member for Education Skills and Culture to develop in consultation with the Director of Education and Skills a new draft Fair Access Protocol following consultation with schools and prior to seeking formal sign off from schools.

3 Background

- 3.1 Birmingham City Council as required has agreed ('determined') admission arrangements annually by 28 February, including the arrangements for 2021/22 and 2022/23. These arrangements so determined apply to the next-but-one academic year (i.e. arrangements determined on 28 February 2021 will apply to the academic year 2022/23). The local authority has also as required determined on an annual basis a co-ordinated admissions scheme which also applies to the next-but-one academic year.
- 3.2 The consultation on the revised School Admissions Code closed in October 2020 resulting in a proposed new School Admissions Code having been laid before parliament in May 2021 and approved by Parliament in July 2021. The admission arrangements for the area had to be determined before the final draft of the new Code was available, and these proposed changes could not therefore have been included at an earlier stage.
- 3.3 The draft Code and associated regulations were laid before Parliament on 13 May 2021. The Code was laid in Parliament for a 40-day period during which both the House of Commons and the House of Lords had the opportunity to review the Code and any Member can pass a motion to not approve it. This 40-day period has expired and the new Code will come into force on 1 September 2021.
- 3.4 The 2021 Code requires children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted to be given equal first priority in admission arrangements, alongside looked after children (LAC) and children who were previously looked after by English local authorities (PLAC). The Code refers to these children as internationally adopted previously looked after children – "IAPLAC".
- 3.5 Paragraph 1.7 of the new Code will require that highest priority is given to "looked after children and all previously looked after children, including those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted".
- 3.6 The DfE guidance "Admission priority for children adopted from state care outside of England- what it means for admission authorities' (May 2021) **Appendix 4** explains how this new provision necessitates variations to determined admission arrangements to take effect from 1 September 2021. Admission authorities are required to vary their admission arrangements for 2021/22 (which would have been determined by 28 February 2020) and their admission arrangements for 2022/23 (which would have been determined by 28 February 2021). Without these variations, admission arrangements that have already been determined will no longer comply with the Code from 1 September 2021.

- 3.7 It is thus expected that admission authorities hold a meeting before 31 August 2021 to determine the necessary variations to admission arrangements for 2021/2022 and 2022/2023. All such variations should come into effect on 1 September 2021.
- 3.8 As these variations will be necessary to comply with a mandatory requirement of the Code, it will not be necessary to refer a variation request to the Schools Adjudicator (in respect of maintained schools).
- 3.9 The proposed changes to the Code in respect of IAPLAC also impact on references to 'Looked after and Previously looked after children' in Birmingham's Co-ordinated Scheme, therefore a variation is required to mirror the changes in the admission arrangements. The new Code (2021) and related DfE guidance are silent on the impact on co-ordinated schemes and the approach to take to vary co-ordinated schemes in respect of the IAPLAC changes. If the variation is not made, the Co-ordinated Scheme will risk not being compliant with the new Code.
- 3.10 All applications received before 1 September 2021 will have been processed in accordance with the existing (2014) Code and offers made and places allocated will be unchanged.
- 3.11 Any applications received on or after 1 September 2021 will need to be processed in accordance with the new Code. By way of example, when dealing with in-year applications for the 2021/2022 academic year, children who are determined as being IAPLAC must be given equal highest priority with LAC and PLAC.
- 3.12 Any child who is on a waiting list for a school before 1 September 2021 and meets the definition of an IAPLAC must be ranked again on 1 September 2021 following the new Code coming into force so that the child is given equal highest priority with LAC and PLAC.
- 3.13 Responsibility for determining whether a child is eligible for IAPLAC priority rests with the admission authority. The DfE plans to publish non-statutory guidance on the admission of IAPLAC in time for the new Code coming into force. This guidance will aim to assist and support admission authorities in assessing evidence provided by parents who want their child to be considered under the IAPLAC criterion.
- 3.14 The guidance will recommend that admission authorities should request advice from their Virtual School Head (VSH), if they are in any doubt about the acceptability of evidence provided by the parent of an IAPLAC.
- 3.15 All references to previously looked after children in the Code mean children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after as well as those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted.

- 3.16 This means that the other provisions in the Code which apply to PLAC (for example, in relation to the admission arrangements of schools with a religious character, selective arrangements, and boarding priority) apply to IAPLAC in the same way as they do to PLAC.
- 3.17 No changes will be required in relation to applications submitted before 1 September 2021, because these will have been processed in accordance with the 2014 Code. Applications received on or after 1 September will need to be processed in accordance with the new Code and waiting lists maintained from 1st September will need to be maintained as per the new Code.
- 3.18 An in-year variation was made to the 2021/22 admission arrangements for Christ Church CE Primary School, St James CE Primary School, St Matthews CE Primary School and St Saviours CE Primary School to reflect church closures during the Covid 19 pandemic. The variation to insert the following paragraph was approved by the Office of the Schools Adjudicator on 23 November 2020 and has already been included in the determined arrangements for 2022/23:
- 3.19 *In the event that during the period specified for attendance at worship the church has been closed for public worship and has not provided alternative premises for that worship, the requirements of these admissions arrangements in relation to attendance will only apply to the period when the church or alternative premises have been available for public worship.*
- 3.20 Alongside the significant change as regards IAPLAC, the government has proposed some changes to the Code which aim to improve support for the in-year admission of vulnerable children and help reduce to a minimum any gaps in their education. These changes are in response to the recommendations made in the Children in Need Review and the Domestic Abuse White Paper and include changes to fair access protocols.
- 3.21 Key changes as regards the fair access protocol:
- 3.21.1 A prescriptive list of children who can be placed under a fair access protocol that includes children who have been out of education for 4 or more weeks. This is a much shorter timescale than the current Code which includes children out of school for 2 months or longer.
- 3.21.2 When it has been agreed that a child will be referred for placement under the fair access protocol, a place must be allocated within 20 school days.
- 3.21.3 If most schools in the area no longer support the principles of the Fair Access Protocol, they can initiate a review with the local authority. The fair access protocol must explain the process for initiating a review.
- 3.22 Other In-Year admissions changes:
- 3.22.1 Admission authorities should aim to notify parents of the outcome of an in-year admission application in writing within 10 school days (unless the admission arrangements involve selection by aptitude or ability) and must

notify them within 15 school days. The current Code does not prescribe a specific timescale for responding to In-Year admission applications.

3.22.2 Admission authorities must notify the local authority of in-year applications promptly and should aim to do so within two school days.

3.22.3 Admission authorities will be required to keep a clear record of any decisions on applications, including in-year applications.

3.22.4 Changes to requirements on information relating to admissions which must be published by the local authority, including:

- *updating the composite prospectus with information about any new schools which open during the offer year;*
- *requirement to publish information to explain how in-year applications will be made and processed by 31 October 2021, and by 31 August in subsequent years;*

3.23 To meet the requirements of the new Code the School Admissions and Fair Access service is proposing to add an addendum to the existing Fair Access Protocol which sets out the mandatory changes that will apply to Fair Access referrals from 1st September 2021. A formal consultation on wider changes, which will include full incorporation of these mandatory changes, is also underway but it will not be concluded before 1st September 2021. Without this addendum the existing Fair Access Protocol would not comply with the Code from 1st September 2021.

3.24 An addendum will be added to the existing FAP outlining the key changes of the Code to support compliance from 1st September 2021.

3.25 Related communications as regards the changes to the Code (Education update, direct school email and Webinar delivered- 30th June) have been provided to schools and all related information for parents including on the School Admissions and Fair Access website will be updated prior to 1st September 2021.

4 Options considered and recommended proposal

4.1 It is not a viable option for the council not to agree the proposed variations to school admission arrangements and the Co-ordinated Scheme or not to respond to the requirements in the Code for changes required for Fair Access Protocols and related processes because failing to make these changes would result in parts of these arrangements and the Protocol becoming unlawful from 1 September 2021.

4.2 To comply with the local authority's duties to determine compliant admission arrangements for 2021/2022 and 2022/23 it is proposed that Cabinet approves the variations to admission arrangements for community and voluntary controlled schools for the academic year 2021/22 (from September 2021) and 2022/2023 (September 2022 entry), as set out in Appendix 1A and 1B respectively and to

agree the same variation to the Co-ordinated Scheme for the academic year 2021/2022 and 2022/2023 Appendix 2A and 2B.

4.3 As identified above to meet the requirements of the new Code the School Admissions and Fair Access service is proposing to add an addendum to the existing Code which sets out the mandatory changes that will apply to Fair Access referrals from 1st September 2021. A formal consultation on wider changes, which will include full incorporation of these mandatory changes, is also underway but it will not be concluded before 1st September 2021. Without this addendum the existing Fair Access Protocol would not comply with the Code from 1st September 2021.

4.4 The approval of those arrangements will continue to ensure support for the Corporate Plan and particularly outcome 2 'Birmingham is an aspirational city to grow up in' and the related priorities;

- 'We will improve protection of vulnerable children and young people'
- 'We will work with Early Years and schools to improve educational attainment and standards'
- 'We will inspire our children and young people to be ambitious and achieve their full potential'

5 Consultation

5.1 Consultation with external partners and stakeholders has not been undertaken as the variations included in the admission arrangements are required by central government and the new proposed Code and the same approach has been taken as regards the variation to the Co-ordinated Scheme.

5.2 Related communication in respect of the new Code has been placed in the Education update (25th June 2021) and the same communication emailed to all own admission authority schools.

5.3 Senior council officers from Special Educational Needs Assessment and Review (SENAR), School Organisation, Early Years, Alternative Provision, SENDIASS, Access 2 Education, Birmingham Virtual School have also been briefed on the changes in the proposed new Code, as have senior officers from Birmingham Children's Trust (25th June 2021).

6 Risk Management

6.1 The council is legally required to determine admission arrangements for community and voluntary controlled schools and have a Co-ordinated Scheme which is compliant with the Code. The council is also legally required to agree a Fair Access Protocol that is compliant with the Code, which includes having been consulted upon with schools and formally agreed by at least half of the schools in the City.

6.2 The approach outlined in this report is designed to ensure that the council meets its related statutory requirements.

7 Compliance Issues

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The determination of the varied admission arrangements and the Co-ordinated Scheme for 2021/22 and 2022/2023 will support the Council Plan 2019 – 2023 and particularly outcome 2 'Birmingham is an aspirational city to grow up in' and the related priorities ('We will improve protection of vulnerable children and young people', 'We will work with Early Years and schools to improve educational attainment and standards' and 'We will inspire our children and young people to be ambitious and achieve their full potential').

7.2 Legal Implications

- 7.2.1 The council has duties under Part 3 of the School Standards and Framework Act 1998, in particular sections 88C and 88M, the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and the statutory School Admissions Code, December 2014 (or May 2021 if approved by Parliament) and statutory School Admissions Appeals Code, February 2012, to determine the admission arrangements for maintained schools, for which the authority is the admission authority, and to formulate a qualifying scheme for co-ordinating the arrangements for the admission of pupils to maintained schools and academies in the authority's area.
- 7.2.2 This legislation also requires the local authority to adopt a 'Fair Access Protocol' to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible.

8 Financial Implications

- 8.1 The direct costs associated with managing the admission arrangements and Co-ordinated Scheme are funded from the School Admissions and Fair Access Service budget, Directorate for Education and Skills. Revenue costs associated with pupil places in schools are funded directly from the Dedicated Schools Grant.
- 8.2 There are potential resource implications for both the School Admissions service and the Virtual School related to implementing the verification of IAPLAC status. The detail will become clearer once the promised and related DfE non-statutory guidance is published and demand has been monitored and assessed. The impact is likely to fall to the Dedicated Schools Block (DSG), rather than to the General Fund.
- 8.3 There are resource implications as regards implementing the in-year changes to the Code and a separate report was submitted to the Schools Forum meeting on 24th June 2021, with additional funding of £161k (pro rata for the 2021/22 financial year) agreed to be allocated from contingency within the Central Services DSG block.

9 Procurement Implications (if required)

9.1 There are no direct procurement issues

10. Human Resources Implications (if required)

10.1 To meet the new in-year requirements of the Code it is intended to recruit to four new posts. The three Grade 3 School Advisor posts and one Grade 4 School Adviser manager post will be recruited as per required policy and funded as described above in the financial implications section of the report.

11 Public Sector Equality Duty

11.1 The admission arrangements for community and voluntary controlled schools and Co-ordinated Scheme aim to provide for equality of access by parents and their children. The authority's admission criteria do not disadvantage particular social groups or those with special educational needs.

11.2 An Equality Impact Assessment (**Appendix 5**) was initially completed on 27th January 2020, reviewed and updated 17th December 2020 and further reviewed in respect of changes to the admission arrangements and Co-ordinated Scheme on 14th June (EQUA462), and the need for a full assessment was not indicated.

11.3 There is no anticipated adverse impact on those individuals with protected characteristics in relation to the required variations. The admissions arrangements and co-ordinated scheme are designed to ensure a fair and transparent system for school admissions and consider the particular needs of vulnerable groups including children with Education, Health and Care Plans and Looked After and previously Looked After Children and children as internationally adopted previously looked after children – "IAPLAC".

11.4 The Equality Impact Assessment will ensure the service monitors actions including: managers monitoring the use of the comments, compliments and complaints process taking particular account of equality and diversity; managers to monitor the number of preferences not received and the number of unrealistic preferences submitted.

12 Appendices

1A Proposed Admission Arrangements for community and Voluntary Controlled schools September 2021-22

1B Proposed Admission Arrangements for Community and Voluntary Controlled schools September 2022-23.

2A Proposed Co-ordinated Scheme September 2021-22

2B Proposed Co-ordinated Scheme September 2022-23

3 Fair Access protocol addendum

- 4 'Admission priority for children adopted from state care outside of England- what it means for admission authorities' (May 2021)
- 5 Equality Impact Assessment (EQUA462) – 14th June 2021
- 6 Environmental and sustainability Assessment

13 Background Documents

- School Standards and Framework Act 1998
- School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012
- School Admissions Code statutory guidance issued by DfE - December 2014
- School Admission Appeals Code statutory guidance issued by the DfE – February 2012
- School Admission Code (2021)
- Cabinet 11th February 2020 (Forward Plan Ref. No. 007290/2020)
'Admission Arrangements for Published Admission Numbers for Community and Voluntary Controlled Schools and the Local Authority Co-ordinated Scheme 2021/2022'
- Cabinet 9th February 2021 (Forward Plan Ref. No. 008400/2021)
Proposed Admission Arrangements and Published Admission Numbers for Community and Voluntary Controlled Schools and the Local Authority Co-ordinated Scheme 2022/2023