

SCHOOLS FORUM – 23 FEBRUARY 2017

Title of paper:	Primary and Secondary Fair Access Funding Consultation
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Summary

This report is to approve additional funding for secondary fair access and to approve an increase in funding from the 2017/2018 financial year for primary and secondary fair access processes. The increase in funding will enable to local authority to place an increasing number of vulnerable pupils with complex needs within an appropriate educational placement, including providing schools with support and monitoring through the process and pupil lead funding according to individual needs.

The local authority will take a strategic decision on the long term support and structure of the fair access processes and support from September 2017 onwards. This will be subject to internal decision making processes, procurement regulations and approval as required.

Recommendation(s):

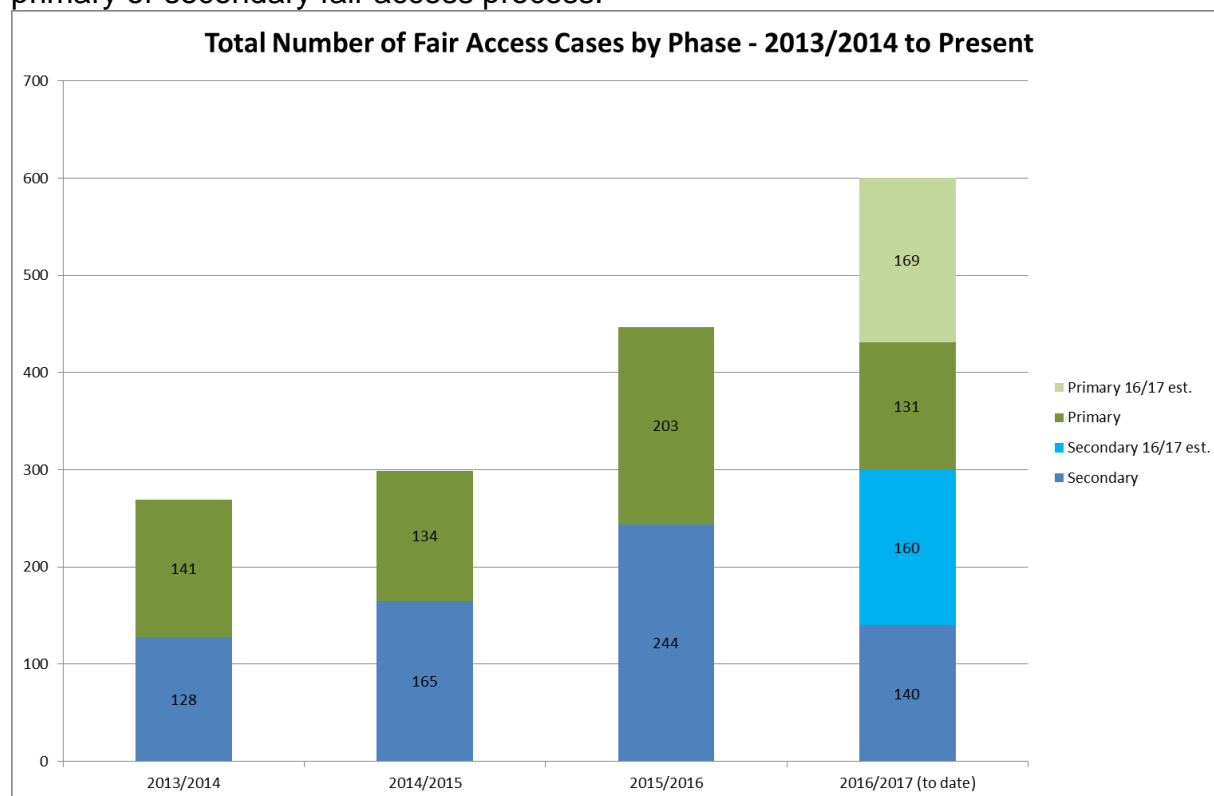
1	To note additional funding for secondary fair access for the 2016/2017 financial year of £100k .
2	To note the proposal to increase the annual primary fair access funding to £100k from 2017/2018 financial year and to carry over any remaining funding to support these processes up to a maximum of £40k.
3	To note the proposal to increase the annual secondary fair access funding to £300k from 2017/2018 financial year and to carry over any remaining funding to support these processes up to a maximum of £70k.
4	To note the proposal to continue to fund £57k each financial year from 2017/2018 to support for Managed Moves as part of the broader Fair Access process and as a strategy to reduce permanent exclusions. Funding will be based on actual expenditure, with any underspend being unearmarked and will not carry over.
5	To note the proposal that each financial year £25,000 from within the SSR will be allocated for emergency expenditure incurred by primary and secondary fair access by the end of the academic year. Any underspend will be unearmarked within the SSR;
6	To note that the local authority will take a strategic decision on the long term support and structure of the primary and secondary fair access processes and support from September 2017 onwards. This will be subject to internal decision making processes, procurement regulations and approval as required.

1 REASONS FOR RECOMMENDATIONS

- 1.1 Fair Access protocols and associated processes have been a statutory function of the local authority since 2006/2007 and are applicable across primary and secondary phases. Fair Access purpose is to ensure that vulnerable pupils are allocated a school place as quickly as possible. Fair access is also an important tool

in reducing the impact of permanent exclusions across the city. In 2015/2016, 23 pupils at risk of permanent exclusion were successfully supported through fair access processes to transfer to another school or provision to avoid a permanent exclusion.

- 1.2 Over the last 3 academic years there has been a significant increase in the number of cases considered through primary and secondary protocols. Additionally, the complexity and support required for pupils has also increased along with placing pupils in a challenging educational environment. It is expected that by the end of the 2016/2017 academic year almost 600 cases will have been considered through a primary or secondary fair access process.



- 1.3 Funding for primary fair access has met the demand of this increase in recent years and is projected to be sustainable. Funding is allocated according to pupil needs and for the 2015/2016 academic year £55k was funded to provide initial support on admission. Previously any unallocated primary funding would not be carried forward; however, it is proposed that any unallocated funding is retained to a maximum of £40k per financial year, to mitigate the risk of funding complex educational placements for pupils hard to place (potentially £25k per placement per academic year).
- 1.4 Primary fair access, managed moves and pupil cases are managed by the local authority. There is a need to increase capacity to create a sufficient service and develop primary fair access systems and processes in line with the support available to secondary vulnerable pupils' and schools. This will be included in the strategic decision regarding the future of fair access and be subject to further internal decisions and procurement processes. It is anticipated that these changes will come into effect in September 2017.
- 1.5 Funding for secondary fair access has increased in demand, due to a number of complex cases requiring alternative provision in key stage 4 (70% of 2015/16 funding). Overall costs for secondary fair access allocations have increased over time from £95k in 2012/13 to 274k in the 2015/16. Currently for the 2016/17 academic year £262k is already committed to educational provision and support.

- 1.6 A Needs Led Tier Funding model was implemented in 2014/15, however, this has not reduced the need for funding, but has made the funding more efficient and pupil led. Currently for the 2016/17 academic year £262k of secondary funding is already committed, not including any further pupil placements considered this academic year which will require funding.
- 1.7 Managed moves form part of the fair access protocols for both primary and secondary. This includes brokering places, supporting the admission; review meetings and interventions. For secondary managed moves £57k has been funded in 2015/16 and 2016/17 for NCSEP to support this function and facilitate managed moves. This funding is in addition to the fair access funding.

Breakdown of Secondary Fair Access and Managed Move Funding

	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017 (to date)	TOTAL
Fair Access Cases	£95,989	£142,435	£134,440	£145,000	£190,291	£708,155
Assessment	£0	£1,960	£4,954	£9,915	£8,745	£25,574
Transport / Uniform	£0	£1,734	£2,830	£1,471	£2,123	£8,158
Managed Moves	£0	£31,182	£11,688	£57,000	£57,000	£156,870
NCSEP Support	£0	£14,534	£61,000	£61,000	£61,000	£197,534
TOTAL	£95,989	£191,845	£214,912	£274,386	£319,159	£1,096,291

- 1.8 In order to ensure efficiency and develop the appropriate capacity for primary and secondary fair access and managed moves processes, the local authority will undertake a strategic analysis and decision regarding the future of fair access and required support. This will include reviewing service delivery and costs to ensure value and quality of the service required to support pupils and schools across both phases of education. This will include consideration to commission services through procurement processes and a contract awarded for at least 3 years. It is expected that these processes will have ended before the end of this academic year in order for the proposed changes to be implemented in September 2017.
- 1.9 As the predictability of complex cases is very difficult, it is proposed that a £25k emergency fund is held in reserve each financial year to mitigate the risk of the fair access funding not being sufficient for primary and secondary phases. This funding would be for risk mitigation each financial year, but the funding would not carry over and accumulate.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 Fair Access protocols and associated processes have been a statutory function of the local authority since 2006/2007 and are applicable across primary and secondary phases. Fair Access purpose is to ensure that vulnerable pupils are allocated a school place as quickly as possible.
- 2.2 Fair Access has been under review since a report in April 2015 which recommended undergoing a formal procurement process to ensure the good work and partnership continued and further efficiencies were made. As a result a formal SLA was drafted and a report brought to schools forum to support on-going secondary fair access initiatives for the 2015/2016 academic year. In February

2016, proposals were presented to the council's internal 'make or buy' panel in order to progress formal agreements surrounding fair access and in April 2016 discussions and planning have taken place to ensure that fair access is fit for purpose for a sustained period of time, taking into consideration the changing landscape. In order to maintain continuity of service during the 2016/17 academic year, a contract is in place for the support of secondary fair access through Bluecoat Academy (NCSEP). This work will contribute to the consideration of the future of fair access from September 2017.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 Other options have been considered, but felt that they do not deliver the same benefit for pupils and schools. The same funding without staffing support has been considered, but this is not viable as numbers of cases increase across primary and secondary phases along with the increased funding support required.
- 3.2 Fair access is a statutory requirement for local authorities and schools to comply with; however, funding for fair access is not statutory. But this option would not be considered viable as there is an increase in complex pupil needs which require funding. Without fair access, funding these placements would be the sole responsibility of the school where the pupil goes on roll.

4 OUTCOMES/DELIVERABLES

- 4.1 Funding will be monitored to ensure it is used effectively and appropriately. This will include using the data gathered to look at cost of places seek value for money. This will be monitored through a contract for the 2016/17 academic year with safeguards in place. This includes key performance indicators linked to funding.
- 4.2 For the 2015/2016 academic year, 77% of primary and secondary pupils placed through fair access were admitted within the 10 day timeline. With additional staffing and support, including appropriate funding, this target will be to exceed 80% across both phases.
- 4.3 Enable further reviews of processes and systems for both phases, including dedicated support for primary fair access and its development in-line with secondary.
- 4.4 Develop systems for monitoring progress of pupils and the impact of support through fair access. This will be reported back to schools and stakeholder to demonstrate impact of funding and fair access protocols.

5 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 5.1 Fair access is funded from the DSG high needs budget. Fair access budgets run on an academic year, with the amount budgeted for the financial year supporting fair access for the academic year that commences within that financial year.
- 5.2 The additional £0.100m funding proposed for secondary fair access for 2016/17 takes the allocation to a total of £0.290m. This is in line with the final funding for 2015/16 as outlined in the report to Schools Forum on 5 November 2015. As this funding was not treated as ongoing in the original 2016/17 budget, this funding will be provided from the DSG reserve.

- 5.3 This report proposes a total funding requirement of £0.457m for 2017/18 for primary and secondary fair access and managed moves. This provides an increase of £0.020m for primary and £0.010m for secondary fair access compared to the funding allocated for 2015/16 and 2016/17.
- 5.4 The £0.457m requirement for 2017/18 is higher than the indicative amount of £0.390m reported previously to Schools Forum but this will be managed within the overall DSG high needs allocation for 2017/18.
- 5.5 Confirmation of actual spend will be required with final funding based on actual expenditure and any unused balance in excess of the agreed carry forward level being reallocated back to the Statutory School Reserve.
- 5.6 A full commissioning review is required for the arrangements from the 2017/18 academic year.

6 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

6.1 Legal Implications

- 6.1.1 The budgetary framework for the financing of maintained schools is contained in Chapter IV of Part II of the School Standards and Framework Act 1998 ("SSFA"). This chapter of the SSFA includes sections 45A (determination of specified budgets of a local authority) and 47A (the duty on a local authority to establish a schools forum for its area).
- 6.1.2 Section 45A(2) of the SSFA states that for the purposes of Part II of the SSFA, a local authority's "schools budget" for a funding period is the amount appropriated by the authority for meeting all education expenditure by the authority in that period of a class or description prescribed for the purposes of this subsection (which may include expenditure incurred otherwise than in respect of schools). Section 45A(2A) of the SSFA states the amount referred to in subsection (2) includes the amount of any grant which is appropriated, for meeting the expenditure mentioned in that subsection, in accordance with a condition which –
- (a) is imposed under section 16 of the Education Act 2002 (terms on which assistance under section 14 of that Act is given) or any other enactment, and
 - (b) requires that the grant be applied as part of the authority's schools budget for the funding period.
- 6.1.3 This means that the designated schools grant ("DSG"), which is paid to local authorities under section 14 of the Education Act 2002 ("EA2002") essentially on condition imposed by the Secretary of State under section 16 of the EA2002 that it is applied as part of an authority's schools budget for the funding period, is part of the schools budget. Indeed, the DSG is the main source of income for the schools budget (Education Funding Agency ("EFA") guidance *Dedicated schools grant Conditions of grant 2016 to 2017* (December 2015), paragraph 2). Local authorities can add to the schools budget from local sources of income (*ibid*, paragraph 4).
- 6.1.4 The detail is prescribed by regulations. The current regulations are the School and Early Years Finance (England) Regulations 2015, SI 2015/2033 ("SEYFR2015"). The SEYFR2015 will be gradually replaced from 1 April 2017 by the School and

Early Years Finance (England) Regulations 2017, SI 2017/44 (“SEYFR2017”) (in force on 16 February 2017). Certainly, on 1 April 2017 the School and Early Years Finance (England) Regulations 2014, SI 2014/3352 (“SEYFR2014”) will be revoked in their entirety. Therefore we are currently in a period of *interregnum*, although some provisions will not change as we move from SEYFR2015 to SEYFR2017.

6.1.5 Both regulation 6(2) of SEYFR2015 and regulation 6(2) of SEYFR2017 state that the schools budget will include:-

(a) expenditure on the provision and maintenance of maintained schools and on the education of pupils at maintained schools;

(b) expenditure on the education of children at independent schools, non-maintained special schools, pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for children otherwise than at schools maintained by a local authority;

(c) all other expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education, in so far as that expenditure does not fall within sub-paragraphs (a) or (b);

6.1.6 Both paragraph 21 of Part 4 of Schedule 2 to the SEYFR2015 and paragraph 32 of Part 5 of Schedule 2 to the SEYFR2017 state the following is a class or description of planned expenditure prescribed for the purposes of the schools budget of a local authority which may be deducted from it to determine the individual schools budget:-

Expenditure incurred in relation to education otherwise than at school under section 19 of the [Education Act 1996] or in relation to a pupil referral unit, where the expenditure cannot be met from the sum referred to in regulation 14(3) and, in the case of an alternative provision Academy, where it would be unreasonable to expect such expenditure to be met from the general annual grant paid to such an Academy by the Secretary of State.

6.1.7 In addition, paragraph 27 of Part 5 of Schedule 2 to the SEYFR2015 and paragraph 39 of Part 6 of Schedule 2 to the SEYFR2017 state the following is a class or description of planned expenditure prescribed for the purposes of the schools budget of a local authority which may be deducted from it to determine the individual schools budget (although under SEYFR2017 this only relates to the budgets of primary and secondary schools):-

Expenditure (other than expenditure referred to in Schedule 1 or any other paragraph of this Schedule) incurred on services relating to the education of children with behavioural difficulties, and on other activities for the purpose of avoiding the exclusion of pupils from schools.

6.1.8 Under both regulation 8(5) of SEYFR2015 and regulation 8(5) of SEYFR2017, the class or description of planned expenditure referred to at paragraph 6.1.6 above does not require the local authority to seek authorisation from its schools forum under regulation 12(1) of those respective regulations, or from the Secretary of State under regulation 12(3) of those respective regulations. However, such authorisation is required for the class or description of planned expenditure referred to at paragraph 6.1.7 above.

6.1.9 Regulation 8(8) of SEYFR2015 states the following:-

Where a local authority treated any expenditure described in Part 5 of Schedule 2 to [SEYFR2014] (Items That May Be Removed From Maintained Schools' Budget Shares) as central expenditure for the previous funding period under regulation 11(4) of [SEYFR2014] and any such amounts remain unspent, such amounts may be used by the local authority in the funding period for the purposes listed in Part 5 of Schedule 2 to [SEYFR2014] that applied to such expenditure.

6.1.10 Regulation 8(9) of SEYFR2017 states the following:-

Where a local authority treated any expenditure described in Part 5 of Schedule 2 to [SEYFR2015] (Items That May Be Removed From Maintained Schools' Budget Shares) as central expenditure for the previous funding period under regulation 11(4) of [SEYFR2015] and any such amounts remain unspent, such amounts may be used by the local authority in the funding period for the purposes listed in Part 5 of Schedule 2 to [SEYFR2015] that applied to such expenditure.

6.1.11 Lastly, both regulation 8(11) of SEYFR2015 and regulation 8(15) of SEYFR2017 state that expenditure referred to in Schedule 2 of the respective regulations includes expenditure on associated administrative costs and overheads.

6.1.12 The proposals in this report relate to funding for fair access and the expenditure on associated administrative costs and overheads of fair access. Therefore, this is expenditure related to alternative provision and/or *incurred on services relating to the education of children with behavioural difficulties, and on other activities for the purpose of avoiding the exclusion of pupils from schools*. Further, where these proposals would entail the spending of a previous underspend, the carry over of an underspend or envision a future underspend then if the proposals comply with the provisions set out at paragraphs 6.1.9 and 6.1.10 above they are lawful. Lastly: insofar as a proposal in this report falls within a class or description of planned expenditure described at paragraph 6.1.6 above, the proposal is for noting only by Nottingham City Schools Forum; insofar as a proposal in this report falls within a class or description of planned expenditure described at paragraph 6.1.7 above, the proposal requires the authorisation of Nottingham City Schools Forum.

7 HR ISSUES

7.1 The recommendations within this report seek approval to provide additional funding for secondary fair access and to approve an increase in funding from the 2017/2018 financial year for primary and secondary fair access processes. This in itself does not pose any employment issues. However, depending on the outcome, there may be a requirement for further approvals in terms of employment matters under a separate report, for which HR Observations should be sought, once the detail of these are known.

Lynn Robinson
HR Business Partner
Children and Adults
10 February 2017

8 EQUALITY IMPACT ASSESSMENT

8.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:
(Please explain why an EIA is not necessary)

Yes

Attached as Appendix 1, and due regard will be given to any implications identified in it.

9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

9.1 N/a

10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

10.1 N/a