

Cabinet Member for Children, Education and Skills- Cllr Laura Mayes

Service Children and Education

Officer Contact:

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Reference:

Finance for Maintained Schools- School Admission Appeals

Purpose of Report

1. To seek agreement to adhere to a change in the Departments for Education (DfE) statutory guidance around admissions appeals and implement charges to all schools (Voluntary Aided, Foundation, Voluntary Controlled and Community Schools) to hear their school admission appeals (Option 5).
2. To note a consistent level of charging would be applied to academy schools who are already charged for this service.
3. Subject to the above, to implement the charges from 1 April 2021.

Relevance to the Council's Business Plan

4. The proposed approach seeks to propose an option that is both viable for the council and continues to support schools, ensuring a sound appeals process.

Background

5. Admission appeals are the process by which a parent or guardian can appeal the allocation of a child's school place. Appeals more commonly affect over-subscribed schools where these are the parent's first choice of school. The appeal is heard by an independent panel who assess whether the admissions authority followed the statutory criteria correctly in allocating the school place.
6. The DfE have changed the guidance for local authorities and now expect all schools to be treated on an equivalent basis in relation to the provision of admission appeals.
7. Previously, the admission appeal service has been provided;
 - a. free of charge for maintained schools (Community Schools and Voluntary Controlled Schools);
 - b. charged at direct costs for own-admission authority schools (Acadmies, Foundation Schools and Voluntary Aided Schools) that chose to buy into the service

and the current dual pricing arrangements cannot therefore continue.

8. Providing an appeals service involves both the Schools Admissions Team to prepare the case for the admission authority, and present it to an appeal panel, and the Democratic Services Team to train, convene and clerk the panel.

Main Considerations for the Council

9. Government guidance for schools is now that if a local authority provides an appeals service without charge to maintained schools, it should not charge other schools for the same service. Alternatively, the local authority should charge all schools equally.
10. Where the local authority holds duties in relation to all schools, all schools must be treated on an equivalent basis. Paragraph 156.1 & 156.2 of the Schools Revenue Funding 2019-20 – Operational Guide states;
 - a) *“Local authorities should not be treating voluntary aided schools, foundation schools or academies, differently from maintained schools in the services they provide to them; this is set out in the DSG conditions of grant. “*
 - b) *“Schools such as voluntary aided schools, foundation schools and academies, cannot therefore be charged for services that are provided free of charge to community and voluntary controlled schools, and paid for out of the centrally held DSG. For example, although admissions appeals are not a duty that the local authority holds in relation to all schools, we would still expect all schools to be treated fairly and equitably by the local authority.”*
11. The Department for Education's Guidance 'Scheme for financing local authority-maintained schools' provides that a local authority can charge LA maintained schools budget share directly for *“costs incurred by the authority in administering admissions appeals, where the local authority is the admissions authority and the funding for admission appeals has been delegated to all schools as part of their formula allocation.”* In Wiltshire the funding for appeals is delegated to all schools as part of their formula allocation.

Options Considered:

1. In response to the recent guidance change, the following options have been considered:
2. Option 1 – To provide admission appeals to all schools free of charge.

There are 127 maintained schools in Wiltshire that currently receive admission appeals free of charge and 146 academies, voluntary aided and foundation schools (own-authority schools) that could also use the service. This option is not operationally or, financially viable as the Council would lose income from own admission authority schools that currently buy into the service, approximately £6,700 per year for the full service, plus approximately £1,500 directly to Democratic Services for panel and clerking services. This

option would also prevent the council from recovering costs it is entitled to recover from LA maintained schools if it delivered their appeals. The risk of increased demand for the appeals service if provided without charge is significant and additional staff would need to be employed. Therefore option 1 is not viable.

3. Option 2- To request a transfer from Schools Forum to top-slice maintained school budgets (dedicated schools block) to provide service funding.

Schools Forum voted against this proposal in January 2020 as it would mean a reduction in funding for all maintained schools, including those who do not have admission appeals. Therefore option 2 is not viable.

4. Option 3- To increase the central schools services block (CSSB) (a dedicated schools grant block) to provide service funding.

Schools Forum voted against this proposal in January 2020 because the CSSB is chargeable across all schools, not just maintained schools and so not a fair option. Therefore option 3 is not viable

5. Option 4 -To charge the service at full cost recovery which includes a portion of back office overhead such as IT, office space, management costs and would be over £900 per full appeal.

Schools Forum indicated the costs would be too high for schools and would not provide them with a reasonable option to use the services of the local authority. The current demand for the service from academies would also likely decrease, thereby reducing the council's current income generation. There are limited alternative providers in the market or, schools can make their own arrangements however, there are concerns that the statutory process would not be followed, and pupils would not attend the most appropriate school place. Therefore option 4 is not recommended.

6. Option 5 – Introduce a consistent level of charges for all schools. The charges applied would include only direct costs. A 'bundle' option would be available to schools which have multiple appeals, at a subsidised rate.

This is the preferred option as it ensures only those schools that have admission appeals are charged. The charges are at a more competitive rate that should be acceptable to schools, whilst allowing the council to generate additional income. The additional income will offset the discount applied and allow a bundle offer to be made available. The bundle option would reduce the cost of appeals for schools that are likely to have multiple appeals. This option would make it more likely that maintained schools would buy into the council's service, ensuring confidence the appeals code is being correctly applied.

Levels of charges

7. The calculations for the rate of charge have been reviewed to ensure they reflect the current administrative arrangements needed to support appeals, as well as efficiencies due to appeals being held virtually.

Service	Charges 20/21	Proposed Charges 21/22	Year on Year Price Change*
Full service	£535	£508	-£27
Full service (3 appeals 30% discount)	N/A	£355 <i>(£152 subsidy)</i>	N/A
Full service (5 appeals 50% discount)	N/A	£254 <i>(£254 subsidy)</i>	N/A
Preparation and presentation only	£314	£314	N/A
Panel and clerking single appeal	£221	£193	-£28
Per additional appeal on same day (full service)	£232	£188	-£44
Per additional appeal on same day (Preparation and Presentation only)	£116	£116	N/A
Per additional appeal on same day (Panel and Clerk only)	£116	£73	-£43

Late withdrawal or settled (full service)*	£232	£252	+£20
Late withdrawal or settled (Preparation and Presentation only)*	£116	£116	N/A
Late withdrawal or settled (Panel and Clerk only)*	£116	£136	+£20
Early withdrawal or settled appeal (full service)*	£154	£137	-£16
Early withdrawal or settled appeal (Preparation and Presentation only)*	£77	£77	N/A
Early withdrawal or settled appeal (Panel and Clerk only)*	£77	£60	-£17

*Withdrawal charges will only apply where preparatory work has already been undertaken, and late withdrawal will constitute within 10 days of the appeal date.

Consultation

8. The Schools Traded Task Group indicated that school appeals provision traded at direct cost would allow schools to buy into this quality local authority service in order to improve outcomes. Trading at a full cost recover would deter schools from buying into this service. It is noted that schools trust the quality of the service of the local authority and would prefer to use this, if traded at a competitive rate.
9. Schools Forum have been consulted and indicated a preference for charges to all schools at a subsidised rate. It was acknowledged that Option 1 (no charge) was not a reasonable option for the Council. The option of reduced priced 'bundles' was supported.
10. The Schools Forum comprises of headteachers, governing body representatives, nursery and post 16 representatives. Schools Forum agrees any changes from the national funding formula such as transfers between blocks, the local authority propose the high needs, central and early years block budgets.

11. Schools Forum have been kept updated with proposals to introduce charging by:

- Update at Schools Forum June 2019
- Options considered at Schools Forum January 2020
- Update at Schools Forum June 2020
- Announcement at Schools Forum on 15 October 2020
- Update at Schools Forum December 2020
- Update at Schools Forum 11 March 2020
- Preparing a statement on the importance of PAN (see Appendix)

12. Voluntary Aided, Foundation, Voluntary Controlled and Community schools have been advised of the changes in DfE guidance and the likely implementation of charges, through the updates detailed in the paragraph below. Academy schools are already charged.

13. Schools were provided details of the current charges applied for academies and invited to complete a survey to indicate if they would be likely to buy into appeals services at a similar rate.

- A notice on the Right Choice website 1 July
- A notice on the Right Choice website 27 July
- Notices in the Schools Newsletters in July and September
- Information provided to WASSH network 2 September
- Announcement at the Headteacher briefing on 10 September
- Announcement at Governors briefing on 14 September
- Notice to School Governors 18 September

14. 34 schools responded to the survey, of these 25 schools indicated they would be interested in purchasing appeals support from the council. A clear preference for the 'full service' combining both the support of the School Admission team and Democratic Services (Preparation, Presentation, Panel and Clerking) was indicated by 22 schools, only 3 schools requested panel and clerking services offered by Democratic Services. No schools requested only the preparation and presentation that is offered by the School Admissions team.

15. Only 1 school expected to have more than 5 appeals per year, all other respondents indicated they would typically have 1-5 appeals per year.

16. Academies already incur charges for admissions, however academies were encouraged to indicate whether they intended to buy into services for the next academic year. As of 25 February 2021, 44 out of 106 academies indicated they intended to buy into services during 20-21.

17. Comments provided during the consultation included that schools felt it was a contradiction that the council (as the admissions authority for maintained schools) could limit school places, however also provide an appeals service. Government guidance however requires the admissions authority to make arrangements for appeals to be heard. An independent panel is used to ensure the appeal is independent from the admissions services.

18. Other feedback included that schools are not usually able to admit pupils where this is over the infant class size limit and therefore the admissions authority has no option to reject an admission request and the school stand the costs of an appeal which would have a high chance of being dismissed. Whilst the council has great sympathy with the impact on schools in these instances, the process is a statutory responsibility and it is clear that schools must cover the cost of appeals.

19. Additionally, representation has been received from a handful of schools explaining there may be occasions they wish to admit over their Planned Admission Number (PAN) and this would negate the need for an appeal. The Schools Forum has prepared a clear statement explaining the expectation that schools should not admit over PAN (except for permitted exceptions) to avoid paying for appeals. This statement is attached as an appendix.

Overview and Scrutiny Engagement

20. Overview and Scrutiny are aware of this paper and did not request further engagement.

Safeguarding Implications

21. Safeguarding expectations and standards in any school would not change as a result of this decision.

Public Health Implications

22. There are no public health implications.

Procurement Implications

23. There are no procurement implications.

Equalities Impact of the Proposal

24. The DfE have considered equality to all schools and pupils in all schools in coming to their decision to change the legislative guidance.

Environmental and Climate Change Considerations

25. Where possible, education appeals will be held online to reduce energy consumption and pollution through travel.

Risks that may arise if the proposed decision and related work is not taken

26. The council would be subject to challenge for treating academies and other own-admission authority schools differently if it does not adhere to DfE guidance.

27. If a direct cost recovery model was applied there could be an increased risk that schools would not refuse school places where they should, to avoid the significant cost of an appeal. A direct costs recovery model would also make it highly likely LA schools would try to buy into external appeal providers, however these are limited and not specialist, therefore may not undertake the appeal correctly.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

28. There is potential the demand for the appeals service could increase under this proposal making it difficult for the council to allocate resources accordingly. To mitigate this risk the council will plan resource on the assumption that all local authority schools will buy into the service (although they have the option not to), and may prioritise those own-admission authority schools wishing to buy-in where they have been previous customers. Schools will be contacted in April to advise them of how to opt in or out.

29. By introducing charges, maintained schools may cease to use the local authority for admission appeals and may use an alternative provider that may not follow the proper statutory process. The risk is mitigated by a subsidized rate to be attractive to maintained schools. Additionally, the council will provide a list of alternative providers and will seek assurances on their arrangements meeting the statutory requirement.

30. Schools may want to avoid appeals and may admit pupils over the Planned Admission Number. Such action would mean popular schools could be pushed over capacity, whilst other local schools continue to have surplus places. As schools are funded on numbers of children on roll, falling numbers in some schools will lead to reduced incomes. For some Wiltshire's schools this will lead to significant financial pressure. To mitigate the risks indicated here and the paragraph above, the pricing is recommended at a level that schools will buy in, and Schools Forum have provided the statement of expectation that schools should not admit over PAN as this could contradict the Code of Practice and impact on school place planning. Schools Forum will refer admissions authorities to the Office of the Schools Adjudicator where there is clear evidence that schools are not acting in accordance with the Code of Practice.

Financial Implications

31. The proposed charges would impact on LA maintained schools which currently receive an appeals service free of charge. Opportunity has been given to Schools Forum to consider alternatives as described in options 2 and 3, these were not accepted, therefore advance notice has been given to schools to allow them to factor the potential charges into their budget.

32. The proposals would not significantly change the charges for own-authority schools that already buy in to the service, therefore introducing the proposed charges should maintain the level of demand and income generated by the council from these own-admission authorities.

33. Under the proposed recommendations, the council would not recover full costs from admission appeals and would subsidise the direct costs for schools that bought into a pre-pay bundle. However, overall income will increase and this will offset the subsidy.
34. It is difficult to forecast additional income from the introduction of charges to all schools as the level of appeals will vary each year depending on the year-group demand which is influenced by many factors, such as the birth rate. Additionally, income generated will depend on whether appeals for the same schools are received at one time (generating a cheaper 'multiple appeal' rate), or separately.
35. If all LA maintained schools bought into the service the council would likely see approximately 77 appeals each year (based on 3 year average), generating approximately £29,000 if all bought into the 'full service' as indicated in the preference to the survey issued, with 50% as single appeals as 50% using the five appeal discount bundle. In addition to this, subject to the capacity of the Admissions and Democratic Services team, additional income could be generated from additional own-authority appeals buying-in.

Legal Implications

36. Under s.94 of the School Standards and Framework 1998 Act the local authority (LA) has a duty to 'make arrangements for enabling' someone to appeal against a decision made by or on behalf of the LA refusing a child admission to a school, where the LA is the admission authority. The LA also has a duty to make arrangements for enabling an appeal against a decision of the governing body of a community or voluntary controlled school to refuse admission to the school.
37. The duty on the LA to make arrangements to enable person to appeal against a decision made by it, or a governing body acting on its behalf, does not mean that the LA necessarily has to provide the service itself. The arrangements could involve the service being provided by another body. However, the responsibility for ensuring that appropriate appeal arrangements remain in place, remains with the LA, and the LA would want assurances of the quality of the appeals provider if an alternative was used.
38. Where the LA is the admissions authority it can charge schools for the cost of administering admission appeals, where funding for those appeals has been delegated to all schools as part of the funding formula (para 8.20 of the Schemes Guidance), as set out in this report.
39. For own-admission authority schools (Foundation, Voluntary Aided Schools or Academies) the obligation to arrange the appeals lies with the governing body or the Academy Trust. These schools/academies can pay for the LA to administer the appeals, or they may choose another provider.
40. The preferred proposal (Option 5) is in line with current DfE legislative guidance.

Workforce Implications

53. The School Admissions team and Democratic Services team provide an appeals service for all LA schools and will plan staff resource on this continuing. The Council will not be able to provide the appeals service to all schools in Wiltshire, however it does not have an obligation to do so.

Proposal

54. Having taken all available options into account and considered the impact of each on the strategic level school place planning, it is proposed that the direct cost recovery model currently applied to academy schools is mirrored for all other schools, subject to a subsidy equally applied for pre-pay bundles.

Reason for Proposal

55. To ensure council compliance with the Statutory Guidance on Schemes for Financing Local Authority (LA) Maintained Schools March 2018 (updated Feb 2019).

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Appendices

Schools Forum Position Statement

Background Papers: The following documents have been relied on in the preparation of this report:

Schools Revenue Funding 2020-21 – Operational Guide

School Admission Appeal Code 2012

Appendix:

Position statement on the Planned Admission Number (PAN) and admission appeals

Background

1. The DfE Guidance 'Scheme for Financing Local Authority-maintained schools', now requires that if a local authority provides an admission appeals service without charge to maintained schools (as in Wiltshire), it is not able to charge other schools for the same service. Alternatively, the Local Authority must charge all schools equally for this service. In Wiltshire the funding for appeals is delegated to all schools as part of their formula allocation.
2. Where the local authority holds duties in relation to all schools, all schools must be treated on an equivalent basis. Paragraph 156.1 & 156.2 of the Schools Revenue Funding – Operational Guide states;
 - a) *“Local authorities should not be treating voluntary aided schools, foundation schools or academies, differently from maintained schools in the services they provide to them; this is set out in the DSG conditions of grant.*
 - b) *“Schools such as voluntary aided schools, foundation schools and academies, cannot therefore be charged for services that are provided free of charge to community and voluntary controlled schools, and paid for out of the centrally held DSG. For example, although admissions appeals are not a duty that the local authority holds in relation to all schools, we would still expect all schools to be treated fairly and equitably by the local authority.”*
3. Wiltshire Council currently provides an admission appeals service free of charge to maintained schools. In light of the revised DfE guidance above, the Local Authority can either now offer this service for free to all own-admission authority schools or introduce fair charges to all schools. It is not financially viable for the Local Authority to introduce free school appeals for all schools. There is no statutory duty for the local authority to provide this and the schools have been delegated funding in their individual allocations.
4. In response to this, over the period July-September 2020, the Local Authority contacted schools to indicate it was likely to introduce charges for admission appeals for all maintained schools, in addition to academy, voluntary aided and foundation schools.
5. Since the contact with schools, the local authority has received representation about potential situations where schools may wish to admit pupils over the Planned Admission Number (PAN) in order to avoid paying for an appeal. For Voluntary Controlled and Community schools the LA is the admissions authority and will refuse applications once the school is at PAN in that year group, unless a child has moved into the catchment area and there is no reasonable alternative school. In these situations, the school would stand the costs of the appeal.

6. For Academies, Foundation and Voluntary Aided schools, the Governing Body/Academy Trust is the admissions authority and could therefore in principle admit above PAN. However, Schools Forum does not support this for the reasons outlined below.
7. The only exception to this is for main round admissions, as schools are given an annual opportunity to request an increase in their PAN for the main intake year only. The Code of Practice states that this must be agreed in sufficient time to allow the LA to administer its coordination responsibilities effectively. In Wiltshire this is January for secondary schools and February for primary and junior schools.
8. This briefing note sets out the position agreed by Schools Forum on expectations on both maintained schools and own-admission authority schools to fund appeals and maintain their PAN to be fair and consistent to all schools.

Importance of schools not admitting over PAN

9. There is a clear expectation from Schools Forum that schools should not admit pupils over their PAN or Infant Class Size number to avoid paying for admission appeals. Such action would mean popular schools could be pushed over capacity, whilst other local schools continue to have surplus places. As schools are funded on numbers of children on roll, falling numbers in some schools will lead to reduced incomes. For some Wiltshire's schools this will lead to significant financial pressure.
10. All schools should apply their admissions policies. Applicants must be prioritised according to the oversubscription criteria. In accordance with the Code of Practice, if an additional place is available it must be allocated to the highest priority pupil, not necessarily the appellant. Schools must not discriminate, if they are under PAN a place must be offered, if at PAN the application should be refused. The only exception to this is for Grammar Schools where applicants have not met the entry requirements. Applications can be referred by all schools to the Fair Access Panel under limited circumstances as outlined in the Fair Access Protocol.
11. Schools Forum recognises the financial impact on maintained schools who also now need to pay for admission appeals. However, it notes that the funding for admission appeals has been delegated to all schools as part of their formula allocation.
12. Schools Forum support's the LA's proposal to subsidise appeal costs provided by the LA for all schools, to reduce the financial implications on those schools that regularly have appeals.

13. Schools Forum will refer admissions authorities to the Office of the Schools Adjudicator where there is clear evidence that schools are not acting in accordance with the Code of Practice.

Type of School	Admission authority	Responsibility for ensuring appeal arrangements are in place	Responsibility for financing the appeals
Academies (CA)	Academy Trust ('own authority school')	Academy Trust	Academy Trust as it receives funding for admission appeals in accordance with funding agreements.
Foundation Schools (FO)	Governing body ('own authority school')	Governing Body	The governing body receives funding for admission appeals in accordance with funding agreements.
Voluntary Aided Schools (VA)	Governing body ('own authority school')	Governing Body	The governing body receives funding for admission appeals in accordance with funding agreements.
Community Schools (CO)	Local Authority (LA 'maintained schools')	Local Authority	The schools themselves as the funding for admission appeals has been delegated to all schools as part of their formula allocation
Voluntary Controlled Schools (VC)	Local Authority (LA 'maintained schools') NB: This may be the governing body if the LA has delegated responsibility to it for determining admission arrangements.	Local Authority	The schools themselves as the funding for admission appeals has been delegated to all schools as part of their formula allocation

