

## LOCAL AUTHORITY FAIR ACCESS PROTOCOL FOR ADMISSION TO SCHOOLS

### Legislation

The School Admissions Code (May 2021) placed a duty on each local authority to have 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.

All admission authorities must participate in the Fair Access Protocol.

### Key Principles

The School Admissions Code (May 2021) requires that:

- 1. Every local authority must have a Fair Access Protocol, agreed with the majority of schools (this includes all school types as listed in the admissions code) 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.<sup>1</sup>*
- 2. 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 permanently excluded from other schools, who display challenging behaviour or who have been placed via the protocol.*
- 3. 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 procedures.*
- 4. Eligibility under the Fair Access Protocol does not limit a parent’s right to make an in-year application to any school for their child which must be processed in line with usual in year admission procedures. Schools must not refuse to admit a child on the basis that they may be eligible for placement under the protocol. Parents continue to have a right of appeal for any place they have been refused, even if the child has been offered a place elsewhere under the protocol.*
- 5. Where a Governing Body does not wish to admit a child with challenging behaviour<sup>2</sup> 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. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. This provision will not apply to a looked after child, a previously looked after child or a child with an Education Health & Care Plan naming the school in question. Admissions 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.*

<sup>1</sup> Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to so in accordance with the Protocol, even when the school is full.

<sup>2</sup> Behaviour is defined as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or is of such severity, frequency or duration that it is beyond the normal range that schools can tolerate. We would expect this behaviour to significantly interfere with the pupil's/other pupil's education or jeopardise the right of staff and pupils to a safe and orderly environment.

<sup>3</sup> For example, where an application has been made to at least one school and this has been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.

6. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parents views must be taken into account.
7. Schools will not be required to automatically admit a child via the protocol in place of a child permanently excluded from the school.
8. Children who qualify for placement under the protocol must be allocated a place within 20 school days.

### **Categories of Children**

This protocol may be used to place the following groups of vulnerable and/or hard to place children only where they are having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures <sup>3</sup>:

- a) children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol
- b) children living in a refuge or in other relevant accommodation at the point of being referred to the Protocol
- c) children from the criminal justice system
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education
- e) children with special needs (but without an Education Health and Care Plan) disabilities or medical conditions
- f) children who are carers
- g) children who are homeless
- h) children in formal kinship care arrangements
- i) children of, or who are, Gypsies, Roma, travellers, Refugees and Asylum seekers
- j) children who have been refused a school place on the ground of their challenging behaviour and referred to the Protocol in accordance with paragraph 3.10 of the School Admissions Code
- k) children for whom a place has not been sought due to exceptional circumstances

*l) children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted*

*m) previously looked after children for whom the local authority has been unable to promptly secure a school place*

## **Procedures**

1. The majority of children requiring a school place will continue to be admitted to their local school in accordance with the usual admission procedures, rather than this Protocol.
2. Where the placement of a child cannot be decided, the local authority will determine the placement, taking into account the circumstances of the individual pupil, as well as which school has a particularly high proportion of children with challenging behaviour or previously excluded children. This provision will not apply to a Looked After Child, a previously Looked After Child or a child with an Education Health & Care Plan naming the school in question. Admissions 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. To decide whether a child is ready for mainstream school, the child must be placed on roll and admitted to school in the first instance, where their needs can be assessed, before seeking appropriate support from the relevant agencies. This does not apply to children already attending Education Centres whose placements will be agreed through the local placement panels.
4. The fact that the PAN has been reached or exceeded cannot be given as a reason for not admitting a pupil under this Protocol.
5. An admission under the Protocol has priority over other children on a waiting list. Schools must not refuse a child on the basis that an appeal was previously unsuccessful.
6. Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place must be allocated within 20 school days.
7. Statutory powers of direction and the rights of schools to Object to Schools Adjudicator are set out below. Where a school has not responded to an in-year application within 15 calendar days the Local Authority will, where appropriate use its powers of direction. For community and voluntary controlled schools, the LA as the admission authority will issue a decision letter in these circumstances.
8. Where the Governing Body of any school wishes (under paragraph 3.10 of the Code) to refuse an in year application of a child where they have reason to believe the child may display challenging behaviour when there are places in a year group, the school must put in writing to the Local Authority only (not the parent) its intention to refuse to admit and the detailed reasons for this decision. This must be received by the Admissions Team within 14 calendar days of receipt of the application to assist the Local Authority's determination of the child's application under the Fair Access Protocol. Where the determination is that the school in question should admit the child, then the Local Authority will request that the offer letter should be issued. Where the school does not do so, the Local Authority will where appropriate use its powers of direction. For Academies and Free Schools direction will be through the prescribed route using the Department for Education processes. For community and voluntary controlled schools, the Local Authority as the admission authority will issue an offer letter.

9. If an application is refused by a school and Fair Access Protocol is evoked to admit a child all schools, including academies, are expected to respond to a request by the Local Authority within 7 calendar days. The governing body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 calendar days (providing contact details to cover any approaching bank holiday or holiday periods).
10. The Local Authority will report on admissions under the Fair Access Protocol in its annual report to the Schools Adjudicator.

## **Safeguarding**

In all cases the Local Authority's duty to safeguard the child is paramount. Children out of school may be at risk – Schools, the Admissions Team, Education Inclusion Service and any other relevant representatives of the Local Authority must do their utmost to ensure that children are not out of school for extended periods of time.

## **Record Keeping & Sharing**

The School Admissions service will keep records of all pupils placed under this Protocol, together with all notified in-year admissions. Schools are required to notify the LA of all admissions and to ensure that the Local Authority has up to date records of numbers on roll in all year groups.

## **Managed Moves**

Information on Managed Moves will be contained in a separate policy.

## **Looked After and Previously Looked After Children**

Looked after children will be placed in accordance with the appropriate legislation to the school that best meets their needs, as determined by the social worker in conjunction with the virtual school. Whilst previously looked after children are included within the protocol - category (m) - the use of the protocol for such children should be unnecessary in most cases. It is expected that local authorities will continue to secure places for previously looked after children promptly to the school that best meets needs and for admission authorities to cooperate with this.

## **Children with Education, Health and Care Plans**

Children with Education Health and Care Plans will be placed in accordance with the appropriate legislation by the SEND team.