

Stockton-On-Tees Borough Council

Fair Access Protocol

Approved September 2014

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1. Purpose

The purpose of the Fair Access Protocol (the Protocol) is to ensure that – outside the normal admissions round - unplaced children, especially the most vulnerable, are found and offered a place quickly, so that the amount of time any child is out of school is kept to the absolute minimum.

The Protocol reflects the Department for Education (DfE) Guidance *Fair Access Protocols: Principles and Processes* (issued November 2012 and reviewed again in February 2014). The Protocol sets out some principles to clarify the expectations on all parties to ensure it can operate effectively. It is aimed at both admission authorities and schools and adheres fully to the School Admissions Code 2014 in particular paragraphs 3.9 to 3.23 that **requires** the Local Authority (LA) and **all** admission authorities within its administrative boundaries to adhere to a Fair Access Protocol (the Protocol).

See **Appendix 1**.

The process is usually triggered when a parent of an eligible child or young person has not secured a school place through in-year admission procedures, or where a child has been permanently excluded.

The Protocol sets out the expectations on the LA and **all** schools to work together to swiftly identify a school place for those children where there is difficulty in finding one.

This updated version of the Protocol, developed in partnership with Heads and Principals to ensure that outside the normal admissions rounds, **unplaced** children and young people, **especially the most vulnerable**, are offered a place at a suitable local school as quickly as possible. This will be done in a fair and transparent manner and is a process agreed by schools in Stockton. **All schools** (including Academies) need to participate, as the Protocol is legally binding on all schools.

2. Principles

The Protocol will be underpinned by a transparent, collaborative approach, with the best interest of children at heart, which seeks to:

- Minimise children's time out of education
- Ensure that schools are held to account for complying with decisions under the protocol to admit children without delay

The Protocol should **not** be used to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is still entitled to an appeal when a place is not offered even when placed through the Protocol.

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 education needs.

Panels will be held regularly (every 3 weeks) to ensure that eligible children and young people secure a school placement as swiftly as possible and at least within the timescales detailed in **Appendix 2**. Schools **must** respond immediately to Panel requests for admission so that the admission of the pupil is not delayed

The Protocol will ensure that no one school or Academy - including those with available places – is asked to take a disproportionate number of children or young people who have been excluded from other schools, or who have challenging behaviour.

Schools **must not** insist on an appeal hearing being heard before admitting a child or young person.

All Heads & Principals should abide by the decisions and are bound by the provisions of the Protocol, **with no exceptions**. The Panel decisions will be communicated by the Chair.

An application to direct an Academy from the Secretary of State should only be requested as a last resort.

3. The Scope of the Protocol

In line with the School Admission Code 2014, the following categories of children and young people (Reception to Year 11) should be considered within the scope of this Protocol, who have difficulty securing a school place:

- I. Children from the criminal justice system or Pupil Referral Units (PRU) and in particular were pupils exiting the PRU are struggling to secure a place at another school and who need to be reintegrated into mainstream education;
- II. Children who have been out of education for two months or more;
- III. Children of Gypsies, Roma, Travellers, refugees and asylum seekers;
- IV. Children who are homeless;
- V. Children with unsupportive family backgrounds for whom a place has not been sought;
- VI. Children who are carers; and
- VII. Children with special educational needs, disabilities or medical conditions (but without a statement or EHCP).

In Stockton the following additional category's has been agreed:

- VIII. Children moving into the authority unable to find a place within normal arrangements;
- IX. Children returning from elective home education will be expected to return to the previous school where they were removed from roll, and it would also be expected that a LA representative from the Attendance team will attend the initial meeting;

Exceptions to IX. would be:

- in extreme situations where the relationship with the previous school remains untenable (as determined by both parent and school) and where a return to the school would not be possible; or
- the family has moved home making the school journey unreasonable;

This provision will **not** apply to children and young people who:

- Are a Child in Our Care (CIOC) either in Stockton or another LA;
- Have previously been a Child in Our Care (CIOC), are adopted or became subject to a child arrangements order or special guardianship order;

- Have a Statement of Special Educational (SEN) or Education Health & Care Plan (EHCP) naming the school in question.

The law requires that children and young people in any or all of these categories **must** be admitted.

Children who are involved in a managed move are beyond the scope of the protocol, as they are not without a school place.

The LA has a duty to ensure sufficient school places for all children in its area. When this is not the case and whilst the LA actively engages in addressing the situation, a small number of children and young people may be referred to the Fair Access Panel, where they have been refused admission to all schools following a move to the area and schools have admitted pupils up to their Published Admission Number.

4. Operation of the Protocol

It is the expectation that **most** children and young people who are eligible for consideration under the Fair Access Protocol criteria will come to the attention of the Admissions & Transfers team through *'In-year application for a school place or a change of school place'* form and are unable to secure a school place.

Where the child was previously on roll at a school in another local authority, the School Admissions team will try to obtain the relevant information from the previous school. However where this is not possible, the school **must not** delay or defer placement decisions in line with the School Admissions Code, paragraph 2.9d, which states that admission authorities **must not** refuse to admit a child solely because information has not been received from their previous school.

Where a school believes it is not in a position to admit a child who applies in-year and **meets** the fair access criteria, the school must refer the child directly to the School Admissions team for placement by the fair access panel providing detailed reasons why they cannot admit them.

Where a school is deemed to have unlawfully refused admission of a child who does not meet the fair access criteria the LA will intervene via the governing body or admissions authority as appropriate, referring to the Office of the School Adjudicator or Secretary of State if necessary.

A decision must be made and a placement secured for any child or young person considered to meet the Fair Access criteria, and whose case is presented to the Panel. Schools must work together to ensure a fair distribution of 'hard to place' children and young people in each school. Responsibility is shared equally amongst admission authorities to ensure a place is allocated. These children and young people should be given priority for admission over others on a waiting list or awaiting an appeal.

If a child or young person has previously been on a school roll, they will return to their school of origin and be placed on roll in the first instance, unless they left due to a permanent exclusion or the Panel deems it to not be in the best interests of the pupil and/or the school.

Where possible, parent(s) and carer(s) preferences will be considered and taken into account but will not override the protocol if the preferred school is unable to admit the child or young person.

Where possible schools best placed to support the child's or young person's educational and welfare needs will be considered first.

Schools **cannot** cite oversubscription as a reason for not admitting a child or young person unless placing would breach Infant Class Size legislation and they could not be classified as an excepted child. However, Panels will still have the authority to put schools into breach where no viable alternative is available. In this instance the child would receive excepted pupil status.

Every effort must be made to limit the time or distance a child or young person must travel to receive education.

The Panel will take account of any genuine concerns about the admission, for example a previous serious breakdown in the relationship between the school community and the family; issues affecting children's safety; or a strong aversion by the family to the religious ethos of the school. If there is the potential to make a choice between a pupil/young person who has a denominational affiliation or one who does not then we would offer the 'denominational pupil' to the denominational school.

The general rule should be that if a child moves into the area s/he attends a local school or the school named by the parents as their first preference. Head teachers **should not** refuse to admit a child if there is a place available, even if the child has behavioural issues or comes from a difficult family background. For schools which are their own admissions authorities, Head teachers and governing bodies are asked to agree a procedure whereby the Head in consultation with the Chair is empowered to make immediate decisions about the placement of a pupil so that there is not a further period of absence from school.

5. Designating an appropriate school

A decision must be made and a placement secured for any child or young person considered to meet Fair Access status by the relevant LA Officer, and whose case is presented to the Panel. Schools must work together to ensure a fair distribution of 'hard to place' children and young people in each school. Responsibility is shared equally amongst admission authorities to ensure a place is allocated. These children and young people should be given priority for admission over others on a waiting list or awaiting an appeal.

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6. Pupil reintegration

Once the Panel has identified a school and decisions on a placement made, the Chair will notify the Admissions & Transfers team for formal notification to the school and parent / carer.

Decisions will be binding on all parties and schools will be accountable for complying with the decisions of the panels, meeting with parents / carers at the first appropriate admission meeting and admitting the child within **10 school days**.

In the event a school does not comply with the outcome of a panel decision, this will be referred to the admissions authority and may be escalate to the Office of Schools Adjudicator or Secretary of State as appropriate.

Parents whose children are being considered under Fair Access retain the right to appeal for school places of preference where they have applied in-year to a school and not been successful in securing a school at one of their preferred schools. Admissions to schools determined under fair access should not be delayed in the event that a parent or carer decides to pursue an appeal for a different preferred school.

7. Dispute Resolution

In the event a Panel decision has been taken and the named school refuses access, all schools, including Academies and Free Schools, are expected to provide a written response to requests by the Panel to admit a child under the Protocol within **seven** calendar days. See **Appendix 2**.

In maintained schools if no agreement can be made with the school then the LA will inform school of its intention to direct by the Director of Children's Services.

The governing body of the school can appeal by referring the case to the Schools Adjudicator within **fifteen** calendar days of the LA's decision to direct.

Similarly, it is expected that an Academy will also agree a starting date for the child or set out its reasons for refusal in writing to the LA within **seven** calendar days

If no agreement can be made then the LA will inform the Academy Trust that it plans to apply for a direction from the Secretary of State via the Education Funding Agency who acts on their behalf.

8. Review of the Protocol

The Protocol will be reviewed annually and if necessary, revised and redistributed to secure agreement from schools.

Appendix 1

The Schools Admissions Code (December 2014) gives details of responsibilities for Local Authorities in relation to agreeing a Fair Access Protocol with schools and academies.

The School Admissions Code specifies that:

- 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.*
- 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. 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.*

Appendix 2

Directions of flow chart (overview of process)

