

Birmingham's

Fair Access Protocol

Implemented January 2018

Updated September 2021

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1. BACKGROUND

The School Admissions Code 2014 sets out the basic requirements for a Fair Access Protocol. Each local authority must have a Fair Access Protocol, agreed with the majority of schools in its area. The purpose of the protocol is to ensure that outside the normal admissions round, children without school places, especially the most vulnerable, are admitted to 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 permanently 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 children who are not ready for mainstream schooling are met.

The operation of Fair Access Protocols is outside the arrangements for co-ordination and is triggered when an eligible child has not secured a school place under in-year admission procedures.

All admission authorities must participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. All schools must participate in the Fair Access Protocol, whether they are community or controlled schools, grammar, voluntary aided or foundation schools and academies and free schools. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

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 or an Education, Health and Care Plan naming the school in question, as these children must be admitted. (NB Paragraph 3.24 of the Appeals Code states that if an application has been refused, despite there being places available, the governing body must present their case for refusal, demonstrating how the admission of the child would prejudice the provision of efficient education or efficient use of resources).

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.

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.

Beyond these requirements, it is for the local authority and schools to determine the scope and operation of the protocol.

2. PRINCIPLES

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

- Minimise children's time out of education;
- Secure appropriate school placements of children;
- Secure an equitable distribution of children across all schools;
- Ensure that all schools participate and take an equitable share of children irrespective of circumstances;
- Ensure that schools are held to account for complying with decisions under the protocol to admit children without delay.

We recognise that children being allocated a school place through the protocol are likely to present with socio-economic challenges. Although there is no duty to comply with parental preference when placing children through the protocol, every effort will be made to allocate a place within a reasonable distance of a child's home to support good attendance and education achievement. Placement will be considered in single sex and/or faith schools where the child has previously attended a single sex school and the parents continue to wish for single sex education or where parents can demonstrate that they meet the priority criteria for a school of that faith, as long as this is consistent with an equitable distribution of pupils across all schools.

3. SCOPE OF THE FAIR ACCESS PROTOCOL

In line with the School Admissions Code (2014) this protocol includes the following children of compulsory school age (Reception to Year 11) who have difficulty securing a school place:

- a) children with challenging behaviour who have been referred to Fair Access by a governing body that has refused admission outside the normal admissions round, even though places are available, where the school has a particularly high proportion of children with challenging behaviour and/or previously excluded children
- b) children from the criminal justice system or Pupil Referral Units who need to be reintegrated into a mainstream education
- c) children who have been out of education for two months or more
- d) children of Gypsies, Roma, Travellers, refugees and asylum seekers
- e) children who are homeless
- f) children with unsupportive family backgrounds for whom a place has not been sought
- g) children who are carers
- h) children with special educational needs, disabilities or medical conditions (but without a statement or Education, Health and Care Plan)

In addition, Birmingham's protocol includes the following groups of children with no school place:

- i) children who have not been able to secure a school place under the normal arrangements within a reasonable distance of their home address. The definition of reasonableness is 6000m for primary children and 7000m for secondary but this is a maximum and will be subject to local circumstances

- j) children returning from elective home education
- k) children with no school place as the result of an illegal school being closed

Children should be living in the area before referral through fair access.

The protocol does not apply to looked after or previously looked after children (LIC), or those with a statement or Education, Health and Care plan as these children 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.

4. DEFINITION OF CHALLENGING BEHAVIOUR

Where a school does not wish to admit a pupil with challenging behaviour outside the normal admissions round (as in paragraph 3.12 of the Admissions Code), it must refer the child for action under the Fair Access Protocol.

Challenging behaviour is defined as:

Children who have been permanently excluded, have a number of fixed period exclusions or present with a number of behaviours that are anti-social and are exhibited through constant disruption, aggression or minor criminal activities. These behavioural issues must be agreed and documented by a range of involved professionals.

Schools will be considered to have a “particularly high proportion of children with challenging behaviour or previously excluded children” if they have a higher percentage of these children across their school than other schools in their network or consortium.

It is expected that this definition will be reviewed at least annually, particularly in light of developing work around children’s mental health.

5. OPERATION OF THE PROTOCOL

The Fair Access Protocol applies to children in Birmingham and/or applying for a place at a Birmingham school who are seeking, but unable to secure a school place in year who meet the fair access criteria defined in section 3.

Fair access referrals must be submitted using the fair access referral proforma (Appendix 1). This proforma is designed to provide sufficient, relevant information relating to the child in order to support placement by a fair access panel. Where the child has been on roll at a Birmingham school previously, the previous school is expected to supply the child’s attainment data, attendance over the last two school years and exclusion data and/or any individual behaviour or risk reduction plans. Referrals should wherever possible include details of any involvement of social care and any relevant family background information, given the significant impact of family background on a child’s education.

Where a child is referred for reintegration from City of Birmingham School or Alternative Provision, the referral must also be accompanied by a reintegration plan.

Where the child was previously on roll at a school in another area, the School Admissions team will try to obtain the relevant information from the previous school. However where this is not possible, it 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 child is newly arrived in the UK, the referring body should try to secure sufficient, relevant information to confirm that the child meets the fair access protocol criteria and to inform appropriate placement. However, schools and panels must not delay admission because information is not available.

5.1 Children with Challenging Behaviour

If a governing body refers a child with challenging behaviour for placement through the Fair Access Protocol, under paragraph 3.12 of the School Admissions Code, they must provide information using the referral form (Appendix 1) to include:

- Details of the child's challenging behaviour
- Evidence that the school has a particularly high proportion of children with challenging behaviour or previously excluded children.

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 (School Admissions Code, paragraph 3.13).

5.2 In-Year Applications

Under Birmingham's published admissions arrangements, parents/carers of children seeking a school place in-year are expected to apply directly to schools. In the event that a school receives a direct application from a child who meets one or more of the fair access criteria, the school may either choose to admit directly or refer to the local authority School Admissions team.

5.3 Direct Admission by Schools of Children who meet Fair Access Criteria

All schools are encouraged to admit children who apply to them directly and meet one or more of the fair access criteria where they are able to do so. When a school directly admits a child who meets the criteria, the school should notify the local authority, via their weekly return, and specify which of the fair access criteria the child has met. The school will then be credited with admitting a Fair Access Protocol child and this will be taken into consideration in future fair access / sharing panel decisions.

5.4 Referrals by Schools of Children who Apply In-Year for a School Place

Where a school 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 local authority School Admissions team for placement by the appropriate fair access panel.

Schools are expected to provide as much as information as possible on the referral form.

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

5.5 Non-Schools' Referrals under Fair Access

A range of services may make referrals for placement to central or local panels for children who meet the fair access criteria; these include the Youth Offending Team, the Elective Home Education Service, the Gypsy Roma Traveller team, City of Birmingham School, providers of Alternative Provision, Children's Social Care.

Where a parent /carer contacts the Council directly for advice on finding a school place, in the event they are identified as meeting the fair access criteria, they may be referred directly to the School Admissions team to complete an in-year application and referral for placement through fair access.

Fair access decisions will be made by central or local fair access panels. All fair access panels will take into consideration:

- fair and equitable distribution of these children across schools, using transparent data to support decision making
- placing children within a reasonable distance from home to support good attendance and recognising that children being allocated through the protocol are likely to present with other socio-economic challenges
- keeping siblings together wherever possible
- meeting faith needs, wherever possible
- avoiding multiple placements at one time in one school in one year group wherever possible
- exceptional circumstances in individual schools that would exempt the school from being considered by the panel for one or more fair access placements

5.6 Exceptional Circumstances in Schools

All schools are in scope for admitting children placed through fair access. However, there may be exceptional circumstances when a fair access panel may consider information provided by a school to justify exemption from a fair access placement.

Schools will be offered the opportunity to provide information to fair access panels where they feel that there are exceptional circumstances that would mean the admission of a fair access child to the year group in question would be of significant detriment to that year group, the school as a whole or the child. This information is to be provided on the School Exceptional Circumstances pro-forma (Appendix 2) and will only be considered valid for a maximum period of six weeks.

6. OPERATION OF THE FAIR ACCESS PROTOCOL AT PRIMARY PHASE

Fair Access panel arrangements differ for primary and secondary age children.

At Primary Phase, all fair access referrals will be considered by a central fair access panel that will meet fortnightly with dates set in advance for the whole school year.

The central fair access panel (primary) will be chaired by the Head of Service, School Admissions and will include representatives from the BCC School Admissions team, representatives from City of Birmingham School and representatives from other BCC education and children's services as appropriate. Primary Head Teacher representatives will be invited to attend every meeting to oversee the decision making process and ensure that the protocol is being applied in an objective, equitable and fair way. Head Teacher representation will be co-ordinated through the Chair of the Primary Head Teachers' Forum.

For each referral, the School Admissions team will compile centrally held information into a scoring grid to inform and support the panel to make decisions (Appendix 3). Fair access decisions will be based in the first instance on ensuring all schools take a fair share of pupils and the number admitted through fair access over the past three terms will count as the most significant factor when building up a scoring grid for allocation.

The scoring grid for each child will include the six nearest schools to the child's home address. Scoring grids will include the following data:

- distance from home
- OFSTED category
- parental preference
- % of pupils with EHCP
- number on roll in the relevant year group
- exceptional school circumstances

Where schools in particular areas are experiencing higher demand for in-year fair access placements, scoring grids may extend beyond the six nearest schools to the child's home address in order to ensure fairness and equity of placements.

Decisions on every fair access case will be made at each meeting and will be reported to the Fair Access Board (see Section 9).

7. OPERATION OF THE FAIR ACCESS PROTOCOL AT SECONDARY PHASE

There will be two types of panel operating fair access at secondary phase:

Local fair access panels (or sharing panels) will meet to consider cases of challenging behaviour together with children from the criminal justice system; children referred from City of Birmingham School or Alternative Provision who need to be reintegrated into mainstream education; and, by exception, complex cases referred by central panel.

A central fair access panel will consider children who meet fair access criteria c) to k) (Section 3). Exceptionally complex cases will be referred to the local fair access panel for placement.

7.1 Local Fair Access Panels (Secondary)

Every school admitting secondary age pupils is expected to participate in the local fair access panel convened for their area network of schools. This includes Alternative Provision Free Schools, Grammar Schools, Studio Schools, University Technical Colleges and All-Through Schools

Children without school places who meet the criteria for challenging behaviour (see Section 4) will be considered at each local fair access panel, together with children from the criminal justice system, City of Birmingham School or Alternative Provision who need to be reintegrated into mainstream education. Normally, children will be referred to the school network in which they live, using the postcode calculator. However, when a student has attended a Birmingham school within the last 12 months and still lives within a reasonable distance of that school, they will be referred to the network in which the previous school is located.

All schools within a network will be expected to send a representative to their nominated local fair access panel. The representative must have the authority to agree placement in their school. Representatives from City of Birmingham School must also attend. Local fair access panels will be supported by a member of staff from School Admissions, who will record placement decisions and report to the Fair Access Board and all networks. Panels may make decisions to place children in schools that do not send a representative to the panel meeting.

To assist decision making, the School Admissions team will provide each local fair access panel with information on placements from the central fair access panel and information on placements via an Education, Health and Care Plan; placements of looked after children; and placements through upheld appeals.

In addition to the scoring grids provided for each referral, local fair access panels will also be able to consider contextual information held in their network and information provided by schools on exceptional circumstances to inform placement decisions.

Placement at a school must be decided at the local fair access panel meeting. In the most exceptional cases where there is evidence of extreme aggression or violence, drugs or weapons being brought into school, integration into another school may not be appropriate. In these cases, panels must progress a decision for the pupil to be admitted to a school, potentially pending a decision by the school regarding an appropriate placement in alternative provision. It is expected that these cases will also then be reviewed and funding may be allocated through the sustaining inclusion budget available to the network to support receiving schools in assessing and commissioning appropriate provision for the individual pupils concerned. Where possible and appropriate, fair access referrals may be admitted directly by Alternative Provision Free Schools within the network itself and /or City of Birmingham School.

7.2 Central Fair Access Panel (Secondary)

The central fair access panel (secondary) will be chaired by the Head of Service, School Admissions and will include representatives from the BCC School Admissions team, representatives from City of Birmingham School and representatives from other BCC education and children's services as appropriate. Secondary Head Teacher and Local Fair Access panel representatives will be invited to attend every meeting to oversee the decision making process and ensure that the protocol is being applied in an objective, equitable and fair way. Head teacher and local panel representation will be co-ordinated through the Chair of the Secondary Head Teachers' Forum.

For each referral, the School Admissions team will compile centrally held information into a scoring grid to inform and support the panel to make decisions. Fair Access decisions will be based in the first instance on ensuring all schools take a fair share of pupils and the number admitted through fair access over the past 3 terms will count as the most significant factor when building up a scoring grid for allocation.

The scoring grid for each child will include the six nearest schools to the child's home address. Scoring grids will include the following data:

- distance from home
- OFSTED category
- parental preference
- % of pupils with EHCP
- number on roll in the relevant year group
- exceptional school circumstances

Where schools in particular areas are experiencing higher demand for in-year fair access placements, scoring grids may extend beyond the six nearest schools in order to ensure fairness and equity of placements.

Decisions on every case will be made at each meeting and will be reported to local fair access panels and the Fair Access Board.

8. DECISION MAKING

Decisions on each case must be made at either the central or local sharing panel meetings. Decisions will be binding on all parties and schools will be accountable for complying with the decisions of the panels, meeting with parent/carers at the first appropriate admission meeting and admitting the child within 10 school days. Placement will be confirmed by the Fair Access Team who will record each placement decision, provide administrative support to panels where necessary and provide termly statistics on placements by all panels and schools.

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 escalated to the Office of the 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 place 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. The information considered by the fair access panel may be used to support school statements for an appeal hearing.

The journey of an application for a school place through to a Fair Access decision is set out in three process charts in Appendix 4.

9. GOVERNANCE

The operation of Birmingham's Fair Access protocol will be overseen by a Fair Access Governance Board, including nominated representatives from primary and secondary schools, City of Birmingham School, the Looked After Children in Education Team, SENAR, alternative provision, exclusions, the Dioceses and asylum seekers and refugee groups. The board will meet termly to oversee the operation of the protocol at both primary and secondary phases. The board will receive information on schools' attendance at panel meetings, the number of cases considered under each fair access category, the number of children placed and the length of time between referral and placement. The board will also review processes including the design of scoring grids as part of a cycle of continuous improvement.

The board will oversee schools' compliance with fair access and where necessary will refer schools causing concern to appropriate accountable bodies, including the Office of the Schools Adjudicator and the Secretary of State to direct admission.

**Fair Access Request
 Exceptional School Circumstances Submission**

All schools are required to participate in admissions through the local authority Fair Access protocol.

Under exceptional circumstances, a school may wish a fair access panel to consider exemption from admissions into one or more year groups in particular. Simply being full is not considered a sufficient reason to constitute an exceptional circumstance.

Schools wishing to be considered for exemption are asked to complete the additional information below for panel to consider. Information is required across year groups for which special consideration is required.

1) Number of pupils on roll in every year group:

2) Number currently over PAN in each year group (please enter zero if not currently over PAN/CAN):

3) Number of pupils admitted into each year group through Fair Access in the last 12 months:

4) Number of fixed term exclusions in each year group in the last 12 months:

5) Number of permanent exclusions in each year group in the last 12 months:

6) Number of pupils with behaviour support plans on roll in each year group:

7) Number of pupils with EHC plans on roll in each year group:

8) Number of looked after children on roll in each year group:

9) Number of pupils with additional needs who attract additional funding on roll in each year group:

10) Any other exceptional circumstances (please note, general level of behaviour of the receiving cohort is not classified as exceptional circumstance) Please continue over the page if necessary:

Thank you for your responses. These factors will be considered by the relevant fair access panel as part of the placement process.

Please complete this form **in full** in order for the panel to select the most suitable and appropriate placement for the pupil.

Local Authority Fair Access Referral Form

Section 1

Date of panel:

Referring School/Organisation:

Section 2 – Pupil Details

Pupil's Name:

Male/Female:

DOB:

Year Group:

Address:

1. Name of Parent/Carer:

Tel Number: Mobile:

2. Name of Parent/Carer:

Tel Number: Mobile:

Siblings:

Interpreter needed: Yes No

Home Language:

Ethnicity:

UPN:

ULC:

Section 2 – Pupil Details**Religion:****Looked After Child? Yes** **No** **Child In Need? Yes** **No** **Free School Meals: Yes** **No** **Most recent/previous schools attended:**

SEN Information (please complete as fully as possible)
Emotional/Behavioural/Social

 Not on COP SEN Support EHC (initiated) EHC
Cognition/Learning

 Not on COP SEN Support EHC (initiated) EHC
Communication/Interaction

 Not on COP SEN Support EHC (initiated) EHC
Is the pupil on the SEN Register? Yes No
Is the pupil under statutory assessment for an EHCP? Date started:
Does the pupil have a final EHCP date issued? Date issued:
Does the pupil have a behaviour support plan
Section 3 – Fair Access Criteria

Fair Access Criteria met: please tick all criteria that apply and provide details of supporting evidence where possible:

Category
Tick
a)

 Child with challenging behaviour who have been referred to Fair Access by a Governing Board that has refused admission outside the normal admissions round, even though places are available, where the school has a particularly high proportion of children with challenging behaviour and/or previously excluded children
b)

 Child from the criminal justice system or Pupil Referral unit who needs to be reintegrated into a mainstream education
c)

 Child who has been out of education for two months or more
d)

 Child of Gypsies, Roma, Travellers, refugees and asylum seekers
e)

 Child who is homeless
f)

 Child with unsupportive family backgrounds for whom a place has not been sought
g)

 Child who is a carer
h)

 Child with special education needs, disabilities or medical conditions (but without a statement or Education, Health and Care Plan)
i)

 Child who has not been able to secure a school place under the normal arrangements within a reasonable distance of their home address. The definition of reasonableness is 6000m for primary children and 7000m for secondary but this is a maximum and will be subject to local circumstances.
j)

 Child returning from elective home education

SEN Information (please complete as fully as possible)
Emotional/Behavioural/Social

Not on COP SEN Support EHC (initiated) EHC

Cognition/Learning

Not on COP SEN Support EHC (initiated) EHC

Communication/Interaction

Not on COP SEN Support EHC (initiated) EHC

Is the pupil on the SEN Register? Yes No

Is the pupil under statutory assessment for an EHCP? Date started:
Does the pupil have a final EHCP date issued? Date issued:
Does the pupil have a behaviour support plan
k) Child with no school place as the result of an illegal school being closed
Supporting Evidence:

Section 4: Please complete this section for any pupil who has been in attendance at a Birmingham school or where information has been made available from a previous school outside of Birmingham.

For pupils arriving without having relevant historical information , please go to section 3

Attendance (last two years, including any records and progress reports. For any long periods of absence please state reasons. If other agencies have been involved please include details in the agency involvement section)

Behaviour (including any fixed term or permanent exclusion information, individual behaviour plan and/or risk reduction plan)

Academic information (please include as much detail as possible, SAT's results if appropriate)

Please comment in which subjects and/or activities the pupil has shown a positive interest or achievement?

Previous intervention/Support:

Section 4 - Agency involvement (Contact names and numbers, past and present)

Agency	Contact	Telephone Number
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CAMHS/TESS:

City of Birmingham School (COBS):

Communication and Autism Team:

Education Psychologist:

Family Support Worker:

Gang intervention:

Physical Difficulty Outreach:

Police:

Pupil and School Support (PSS):

Sensory Support:

Sexual Harmful Behaviour Team:

Social Work Support:

Think Family:

Youth Offending Team (YOT):

Other (please clarify):

FCAF Initiated:

Yes No

Telephone:

Lead Practitioner: Organisation:

Relevant Personal or Home Circumstances (Parental involvement, family structure, LACES, Foster Care, Children's Home, Child Protection, recent bereavement; sensitive information should not be shared at this stage unless it is essential for the panel to know)

Section 4 - Agency involvement (Contact names and numbers, past and present)

Additional Information (Detailed picture of pupil, including positive attributes, any medical diagnosis, concerning behaviour with parties outside school, impact on peer group, interests and hobbies, membership of groups/clubs)

Gang Related Issues: Yes No

Section 5 - Risk Assessment and Safeguarding questionnaire

0 = Unlikely

1 = Improbable

2 = Small Possibility

3 = Possible

4 = Probable

5 = Certain

Risk and rating between (1-5)

- | | |
|---|--------------------------|
| Theft: | <input type="checkbox"/> |
| Truancy: | <input type="checkbox"/> |
| Absconding: | <input type="checkbox"/> |
| Substance Misuse: | <input type="checkbox"/> |
| Alcohol Misuse: | <input type="checkbox"/> |
| Damage to Property: | <input type="checkbox"/> |
| Arson: | <input type="checkbox"/> |
| Weapon related incident: | <input type="checkbox"/> |
| Physical aggression towards peers: | <input type="checkbox"/> |
| Physical aggression towards adults: | <input type="checkbox"/> |
| Verbal aggression towards peers: | <input type="checkbox"/> |
| Verbal aggression towards adults: | <input type="checkbox"/> |
| Threatening behaviour towards peers: | <input type="checkbox"/> |
| Threatening behaviour towards staff: | <input type="checkbox"/> |
| Bullying peers: | <input type="checkbox"/> |
| Persistent defiance: | <input type="checkbox"/> |
| Persistent refusal to follow instructions: | <input type="checkbox"/> |
| Sexual inappropriate behaviour towards others: | <input type="checkbox"/> |
| Dangerous behaviour in the Environment: | <input type="checkbox"/> |
| Confidential child protection – information available on request: | <input type="checkbox"/> |

Section 5 - Risk Assessment and Safeguarding questionnaire

Empty space for notes or observations.

Safeguarding Questionnaire

Does the child appear to be?	Yes	No	Not sure	Evidence/Comments
Healthy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Safe from Harm?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Learning and Developing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Free from crime or antisocial behaviour?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Free from the Impact of Poverty or worklessness?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Benefit type: N/A				

Section 6 – Signature of Referrer
Name:
Position:
Email Address:
Date:

Addendum to the Birmingham City Council Fair Access Protocol (2018) to reflect the requirements of the School Admissions Code (2021)

- 1.1 Key changes in the new School Admissions Code as regards the fair access protocol that come into effect from 1st September 2021 are:
- 1.1.1 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. Previously looked after children for whom the local authority has been unable to promptly secure a school place are also included in the list for the first time. Children returning from EHE are no longer a category but can still be considered under the protocol where they fall within other relevant categories.
 - 1.1.2 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. Previously the Code was not specific in this respect.
 - 1.1.3 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. A review has been initiated (see Cabinet report of 27th July 2021) and will consider as part of its work future arrangements for initiating the same.
 - 1.1.4 Decisions about admitting children under the Protocol can be made by one individual in an admission authority provide that suitable authority has been delegated to that individual. For schools that BCC is the admission authority for this will continue to be managed at a school level.

Extract from the School Admissions Code (2021) in relation to Fair Access Protocols:

Fair Access Protocols:

3.14 Each local authority **must** 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.

3.15 The Protocol **must** be consulted upon and developed in partnership with all schools in its area. Once the protocol has been agreed by the majority of schools in its area, all admission authorities **must** participate in it. Participation includes making available representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full.¹ Local authorities **must** provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the Protocol will take place.

¹ Decisions about admitting children under the Protocol can be made by one individual in an admission authority provided that suitable authority has been delegated to that individual. Admission authorities must ensure this process complies with relevant governance requirements.
Fair Access Protocol

3.16 No school – including those with places available – should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol. Fair Access Protocols **must** also set out how the needs of children who have been permanently excluded, and children for whom mainstream education is not yet possible, will be met.

3.17 Fair Access Protocols may only be used to place the following groups of vulnerable and/or hard to place children, 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 procedures²:

- a. children either subject to a Child in Need Plan or a Child Protection Plan³ 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 educational 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 arrangements⁴;
- i. children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- j. children who have been refused a school place on the grounds of their challenging behaviour and referred to the Protocol in accordance with paragraph 3.10 of this Code;
- k. children for who a place has not been sought due to exceptional circumstances⁵;
- 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; and
- m. previously looked after children for whom the local authority has been unable to promptly secure a school place⁶.

3.18 Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities **must** process these applications in

² 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.

³ Child in Need Plans and Child Protection Plans are plans of help and protection to address safeguarding and welfare needs, where a child has been assessed by the local authority as being a child in need under Section 17 of the Children Act 1989 and/or as suffering or likely to suffer significant hardship under Section 47 of the Children Act 1989. See also statutory guidance Working Together to Safeguard Children (2018) (pages 35 and 48-49).

⁴ As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.

⁵ It is for the local authority to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case.

⁶ In most cases use of the Fair Access protocol should be unnecessary for a previously looked after child. We would expect the local authority to aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this. The local authority may consider swift use of their general powers of direction (under paragraphs 3.26-3.28) or asking the Secretary of State to consider a direction (under paragraph 3.29) to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with the admission authority promptly.

accordance with their usual in-year admission procedures (as set out in paragraphs 2.23-2.31). They **must not** refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access protocol. The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access protocol.

- 3.19 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 should be taken into account.
- 3.20 Fair Access protocols should seek to place a child in a school that is appropriate to any particular needs they may have. The Fair Access protocol **must not** require a school automatically to admit a child via the Fair Access Protocol, in place of a child permanently excluded from the school.
- 3.21 Where it has been agreed that a child will be considered under the Fair Access protocol, a school place **must** be allocated for that child within 20 school days. Once they have been allocated a school place via the Fair Access protocol, arrangements should be made for the child to start at the school as soon as possible.
- 3.22 In the event that the majority of schools in an area can no longer support the principles and approach of their local Fair Access Protocol, they should initiate a review with the local authority. There should be a clear process for how such a review can be initiated within each Fair Access Protocol. The existing Fair Access Protocol will remain binding on all schools in the local area until the point at which a new one is adopted.