



**WARRINGTON**  
Borough Council

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**LOCAL AUTHORITY'S**  
**FAIR ACCESS PROTOCOL**

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## 1 PURPOSE

- 1.1 Section 2.28 of the Code published in May 2021 states that all maintained schools and Academies that have places available must offer a place to everyone who has applied for one, without condition, unless admitting the child would prejudice the efficient provision of education or use of resources. For example, admission authorities must not refuse to admit a child solely because:
  - a) They have applied later than other applicants;
  - b) They have followed a different curriculum at their previous school; or
  - c) Information has not been received from their previous school.
- 1.2 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 place in-year, are allocated a school place as quickly as possible.
- 1.3 Children may only be placed in accordance with the fair access protocol when an application is made to transfer from one school to another part way through a school year. Children admitted to school during the normal admissions round cannot legally be considered or placed using fair access procedures.
- 1.4 Where an admission authority receives an in-year application and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour\*, it may refuse admission and refer the child to the Fair Access Protocol. (\*see Section 2). Alternatively, at this point school leaders who have agreed to the Managed Transfer Protocols may choose to adopt this strategy. (see Appendix 3)
- 1.5 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. Children who have been permanently excluded are placed at schools in accordance with a rotation system. This is a separate process which is administered by the LA through a process which has been agreed between the LA and schools. Protocols regarding permanent exclusion can be found in Appendix 2
- 1.6 An admission authority should only refer to the child for placement via the Protocol if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and because of this, it considers that admitting another child with challenging behaviour\* would prejudice the provision of efficient education and the efficient use of resources.
- 1.7 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.

- 1.8 Fair Access Protocols do not apply to Children in Care, former Children in Care or a child with an Education, Health and Care Plan naming the school to which admission is sought, as these children must be admitted without delay.

## **2 \*DEFINITION OF CHALLENGING BEHAVIOUR**

- 2.1 The Code states that behaviour can be described as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour **or** it is of such severity, frequency, or duration that it is beyond the normal range that schools could tolerate. Such behaviour would be expected to significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.
- 2.2 A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admissions on these grounds, admission authorities must their duties under that Act.
- 2.3 There is no requirement to comply with parental preference when placing children in accordance with the Fair Access Protocol however; if an applicant is refused any of their preferred schools, they must be informed of their statutory right of appeal against the decision(s) not to offer a place at the school(s) of their preference.

## **3. THE LOCALLY AGREED SCHEME FOR FAIR ACCESS PLACEMENTS**

- 3.1 Parents/carers who wish to transfer their child to another school part way through a school year must complete the local authority's in-year admission form. The parent/carer must submit the completed form to the school admissions team for consideration.
- 3.2 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 school place through the usual in-year admission procedures.
- a) children either subject to a Child in Need Plan or a Child Protection Plan or having 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 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 grounds of their challenging behaviour and referred to the Protocol in accordance with Paragraph 2.5 of this Protocol;**
- 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; and**
- m) **previously looked after children for whom the local authority has been unable to promptly secure a school place.**

3.3 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 place via the Protocol, arrangements should be made for the child to start as soon as possible. Schools also need to complete a Section 7 to provide further information (see appendix 1).

3.4 The Local Authority has the power to direct the admission authority for any maintained school in its area to admit a child even if the school is full. The Local Authority can only make such a direction in respect of a child in the Local Authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The Local Authority must choose a school within a reasonable distance from the child's home address and from which the child is not permanently excluded.

3.5 Before deciding to give a direction, the LA must consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. If, following consultation, the LA decides to direct, it must inform the governing body and head teacher of the school. The governing body can appeal by referring the case to the school's adjudicator within 15 days. If it does this, the governing body must tell the LA. The local authority must not make a direction until the 15 days have passed and the case has not been referred.

**All other in-year admission applications which do not meet the fair access criteria will be processed using standard in year admission procedures. This means that if there is a place available in the required year group and the applicant does not meet the criteria for**

#### **4. APPEALS PROCEDURE**

4.1 Paragraph 3.24 of the School Admission Appeals Code states that the allocation of a place in accordance with a Fair Access Protocol does not override a parent's right to appeal against the refusal of a place at any school for which they have applied. If an application has been refused despite there being places available, the admission authority must present their case for refusal, demonstrating how admission of the child in question would prejudice the provision of efficient education or efficient use of resources. When considering such an appeal, in addition to considering the appellant's argument for their child to be admitted, the

panel must take account of the requirements set out in the local authority's Fair Access Protocol. The panel must then carefully consider whether the presenting officer has clearly proven that admission of the child would be prejudicial to the school or other children in attendance at the school.