



Fair Access Protocol

for the academic year 2017/18

1. Interpretation

In this Protocol:

'the LA' means Cornwall Council acting in its capacity as local authority;

'school' means a community, foundation, voluntary-controlled ('VC'), voluntary-aided ('VA'), or trust school which is maintained by the LA or an academy or free school (but not a special school);

'in-year application' means any application for a school place in any year group at a school received during the school year;

'parent' means a parent/carer/body which has Parental Responsibility for the child;

'PAN' means the Published Admission Number for the year of entry at a school. Where referred to in terms of Fair Access placements it will be assumed that the PAN follows/has followed the year group through the school unless another limit has been agreed;

'Reasonable travelling distance' for a secondary-aged child is defined as 10 miles (extended to 18 miles for those living in the designated area of Budehaven Community School) and is defined as 5 miles for a primary-aged child, with travelling times not exceeding 75 minutes for a secondary-aged child and 45 minutes for a primary-aged child. Any exceptions to this definition will be decided by the Head of Education Access and Sufficiency¹.

'Challenging behaviour' is defined as a child who exhibits behaviour that is persistent and ongoing despite school intervention under its behaviour and discipline policy. Challenging behaviour would be evidenced by some or all of the following: time in inclusion, regular fixed term exclusions, governors' meetings, a pastoral support programme or behaviour support plan being in place.

2. Introduction and principles

- 2.1. This Fair Access Protocol ('the Protocol') is written in accordance with the School Admissions Code 2014 (issued under Section 84 of the School Standards and Framework Act 1998) and applies to all community, voluntary-controlled, voluntary-aided, foundation, trust, academy and free schools in Cornwall and to admissions in the academic year 2016/17.
- 2.2. The majority of in-year applications will be straightforward and places will be allocated where the number on roll in the year group in question is below the Published Admission Number (PAN). However, the Admissions Code 2014 states: '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 children who are not ready for mainstream

¹ Any reference to the Senior Manager, Place Planning, Access and Inclusion in this Protocol may also mean a delegated officer.

schooling are met. All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly.'

- 2.3. Referral under the Protocol must not be used as a means to circumvent normal admissions procedures. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered. The Fair Access Protocol is triggered when an eligible child is unplaced, outside the normal admissions round.
- 2.4. Children in Care (also known as 'looked after children') or children that were previously in care² and/or children with a Statement of Special Educational Needs or an Education, Health and Care Plan (EHC plan) will be dealt with outside the Protocol. These children will be referred through Cornwall Council's Children in Care Education Support Service and/or Special Educational Needs (SEN) Assessment and Provision Team as appropriate.
- 2.5. Children in Care, children that were previously in care and children placed through the Protocol take precedence over children on a school's waiting list.
- 2.6. There is no duty upon the Admission Authority or the LA to comply with parental preference when allocating places through the Protocol. However, the allocation of places in accordance with a Fair Access Protocol does not override a parent's right to appeal to an independent appeal panel against the refusal of a place at any school for which they have applied. The right of appeal is withdrawn for a child who has been twice permanently excluded where the last exclusion was within the last two years (Admission Appeals Code, Section 6).
- 2.7. Where a school refuses to take a pupil under the Fair Access Protocol, the LA will consider whether the process of Direction, in line with the Admissions Code 2014, should be followed.

3. Consideration under the Protocol

- 3.1. In the first instance, the School Admissions Team will consider whether or not an in-year application falls under the Fair Access Protocol. The Fair Access Protocol will only apply where an eligible child is unplaced, outside the normal admissions round.
- 3.2. Applications for eligible children who are unplaced outside the normal admissions round and considered by the School Admissions Team to fall under Level 1 of the Protocol will be handled in accordance with Section 5 of this Protocol. Applications for eligible children who are unplaced outside the normal admissions round and considered by the School Admissions Team to fall under Level 2 of the Protocol will be handled in accordance with Section 6 of this Protocol.
- 3.3. Where a final decision is needed on whether or not the application falls under the Protocol, the application will be referred to the Head of Education Access and Sufficiency who will consider if it is appropriate to seek a place at a school under the Protocol, or whether normal admissions procedures should be followed.

² A 'child in care' is also referred to as a 'looked after child' and is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989). A child 'previously in care' is a child that was in care but immediately after being in care became subject to an Adoption, Child Arrangement Order or Special Guardianship Order.

Timing

- 3.4.** Applications which are eligible under the Protocol will be processed as a priority by the School Admissions Team. Timescales will depend on factors such as time needed to gather information to identify a suitable placement or the date of the next Fair Access Panel meeting.
- 3.5.** During the process of securing a school place through the Fair Access Protocol, if a child has been or will be without an education placement for more than 20 school days from the commencement of the admissions process, Acorn Academy Cornwall will be asked to provide a place for the child to ensure that they are not out of education for an excessive amount of time in accordance with Section 7 of the Protocol.

4. Eligible children

- 4.1.** The categories of children who are considered 'vulnerable' and would qualify for consideration under the Fair Access Protocol are:
- i. children without a school place and with a history of serious attendance problems;
 - ii. children known to the police or other agencies;
 - iii. children who have been without a school place and out of education for two months or more (and not registered for Elective Home Education);
 - iv. children of Gypsies, Roma, Travellers, refugees, asylum seekers and migrant workers;
 - v. homeless children (including those in a registered refuge);
 - vi. children with unsupportive family backgrounds where a place has not been sought;
 - vii. children who are carers;
 - viii. children with special educational needs, disabilities or medical conditions (but without a Statement of Special Educational Needs or Education, Health and Care Plan);
 - ix. children of UK Service personnel and other Crown Servants;
 - x. children whose parents have been unable to secure a school place within a reasonable travelling distance after moving to the area because of a shortage of places;
 - xi. children seeking a place in year 11 that have failed to secure one;
 - xii. children without a school place who for exceptional reasons and in the view of the LA should be considered vulnerable;
 - xiii. children returning from the criminal justice system or children accessing or previously accessing alternative provision who need to be reintegrated back into mainstream education;
 - xiv. children that have been permanently excluded or were at risk of permanent exclusion before being withdrawn from a school and are now without a mainstream school place;
 - xv. children with a history of challenging behaviour that are without a mainstream school place because they have not been able to secure one through normal admissions procedures.

5. Procedures: 'Level 1'

- 5.1. For eligible children under Section 4.1 i to xii (that do not also fall under xiii to xv) that have failed to secure a place at a suitable school within reasonable travelling distance under normal in-year admissions procedures or for reasons related to their vulnerability remain unplaced at a suitable school, if the preference is for a designated or nearest school and that school is not already 5% above PAN for the relevant year group, a place will be allocated at that school.
- 5.2. If the preference is not for the designated or nearest school and there are reasons why placement at a particular school would be more appropriate a place will be allocated at the preferred school, as long as that school is not already 5% above PAN for the relevant year group.
- 5.3. If no preferences can be met, the LA will name an alternative school. This school would usually be the nearest appropriate school to the child's address that is not more than 5% above PAN in the relevant year group.
- 5.4. The 5% will be rounded down to the nearest whole number. For primary schools with a PAN less than 20, 5% would be 0. As a result, these schools would be required to admit one child above the PAN in the year group.
- 5.5. However, no child will be placed above the PAN in a school that has been judged by Ofsted in the last six months to be inadequate following a Section 5 inspection or Section 8 monitoring visit (i.e. is judged to require Special Measures or to have Serious Weaknesses) or in a primary school if admitting an extra child would breach the Infant Class Size Legislation, unless the child would be a permitted exception under the Admissions Code 2014 (paragraph 2.15). Consideration may also be given to the number of placements through the Fair Access Protocol that the school has already accepted during the academic year in which the place is requested and any other relevant factors.
- 5.6. The School Admissions Team will initially consider whether or not an application falls under the Fair Access Protocol (Level 1). For applications where it is unclear if this section of the Protocol should be applied, the application will be referred to the Head of Education Access and Sufficiency who will have the final decision on whether or not it is appropriate to seek a place at a school under the Fair Access Protocol or whether normal admissions procedures should be followed.

6. Procedures: 'Level 2'

- 6.1. Level 2 of the Protocol applies only to eligible children under Section 4.1 xiii to xv who are unplaced, outside the normal admissions round.
- 6.2. The Admissions Code 2014 states that 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 application to the LA for action under the Fair Access Protocol. This will only apply where the child **does not have a school place** and cannot, therefore, be considered under the Managed Move Protocol (see Section 8) and will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. Referrals will be considered by the Head of Education Access and Sufficiency who will consider if it is appropriate to seek a place at a school under the Fair Access Protocol (Level 2), or whether normal admissions procedures should be followed.
- 6.3. Applications for the following children will automatically be handled under 'Level 2' of this Protocol:
- i. children returning from the criminal justice system or children accessing or previously accessing alternative provision who need to be reintegrated into mainstream education but are without a mainstream school place;
 - ii. children that have been permanently excluded or were at risk of permanent exclusion before being withdrawn from a school and are now without a mainstream school place; or
 - iii. children with a history of challenging behaviour that are without a mainstream school place because they have not been able to secure one through normal admissions procedures.
- 6.4. Fair Access Panels operate across six county areas to consider applications for secondary-age children falling under Section 6.3. The Panels are there to ensure that a place can be secured for these vulnerable children at a suitable school while ensuring that no school is asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour.
- 6.5. However, where a secondary-aged child needs a mainstream school place quickly which would ordinarily go to the Fair Access Panel or where a school has referred the case back to the LA as described in Section 6.2, a school may be asked to take the child under the Protocol. The Head of Education Access and Sufficiency will approach a school that is assessed as suitable using the criteria normally applied by the Fair Access Panel. Schools may not refuse to consider the admission of a child that should ordinarily go to the Fair Access Panel where that child is not in education and is considered vulnerable or delayed admission would have a particular negative impact. A school taking a child outside the Fair Access Panel in this way will have the placement recorded under their allocations for the year, as defined under Section 6.13.
- 6.6. The six area Fair Access Panels each meet half-termly, linked to the area Behaviour for Learning Partnership meetings. They are made up of at least three representatives who are senior leaders from the schools in the Panel area and who must have delegated responsibility for decision making at the Fair Access Panel. The Principal of Acorn Academy Cornwall and the Headteacher of the Alternative Provision Academy (APA) serving the area will also attend. Officers of the LA such as

representatives of the Children in Care Education Support Service and the Statutory SEN Team and other professionals may be invited to attend as advisors. The Fair Access Panel is chaired by an independent representative of the LA, usually the Head of Education Access and Sufficiency. Only Fair Access Panel members and the Chair have voting rights.

- 6.7.** Non-attendance by a school representative at a panel meeting does not preclude a decision to place a child at that school and these decisions are still binding.
- 6.8.** Administration of the Fair Access process and the Fair Access Panels will be the responsibility of the Head of Education Access and Sufficiency who will chair the meeting and hold the minutes and related paperwork.
- 6.9.** An agenda and related paperwork will be circulated to Panel members five working days before the meeting and the minutes will be circulated within five working days from the meeting, as far as possible. Additional background evidence will be sought in each case to support the Panel decision-making process. The Place Planning, Access and Inclusion Team will gather information in relation to the child from their previous school, as far as possible, including behaviour records, attendance information and curriculum/progress information.
- 6.10.** Cases to be referred to the Fair Access Panel will initially be added to the agenda of the Fair Access Panel for the area in which the first preference school is located. There may be cases where there is evidence to support that a placement in a neighbouring area would be in the best interests of the child or other children. In these cases, the details will be referred to the other area panel. No panel may refuse to consider cases from other areas where there is strong evidence to support a referral. Panels must not work entirely in isolation and must consider the needs of children across all areas of Cornwall.
- 6.11.** There may be cases where the parent of a permanently excluded child refuses the LA's offer of a place at an APA and may need to submit an In-year Application as soon as possible after the exclusion. Parents will be encouraged to accept the APA place in order to support a successful reintegration to school, however, the LA cannot enforce this acceptance. Schools are able to enforce attendance at an APA for a child on roll if this is considered appropriate by the APA, therefore it is not expected that schools will refuse to accept children through Fair Access on the basis that they are not attending an APA.
- 6.12.** When deciding on a placement, the Panel will consider:
 - i. parental preference;
 - ii. if the school has been judged by Ofsted in the last six months to be inadequate following a Section 5 inspection or Section 8 monitoring visit (i.e. is judged to require Special Measures or to have Serious Weaknesses or is otherwise considered by the LA as needing significant support), in which case they are unlikely to be expected to take a placement through the Panel;
 - iii. PAN and number on roll (NOR) for the relevant year group, with a placement being unlikely where the school is more than 5% over that limit;
 - iv. number of admissions to the relevant year group in the preferred school in the 'rolling year' under the Fair Access Protocol Section 6.13;
 - v. all current cases due to be considered for the same year group and the impact of taking more than one child through the Fair Access Panel at the same time;

- vi. distance to school measured by the nearest available route as determined by Cornwall Council's chosen Geographical Information System and whether or not this is 'reasonable travelling distance' and the cost implications;
- vii. evidence to support refusing parental preference, such as a previous serious breakdown of the relationship between the family and the school.

- 6.13.** Each secondary school will be given an initial limit of admitting two children through the Panel in each cohort during a 'rolling year'. Formal managed moves (i.e. those that are arranged through the LA) will count towards these limits. Therefore, a child placed by the Fair Access Panel will be considered against future Panel placements for a further five half terms from the date of the Panel decision. The 'rolling year' in the Protocol is defined as 'across six half-terms' rather than between specific dates. The limits do not preclude schools voluntarily exceeding this limit where they feel they can best meet the needs of the child. Schools may also request that placements of children with challenging behaviour outside the Fair Access Panel be counted in these limits and this will be considered by the Head of Education Access and Sufficiency and is only likely to be accepted where there is evidence that the child was previously at risk of permanent exclusion. A child will not be counted in the limits in Section 6.13 for a particular school if the child is no longer on roll, for whatever reason. If this happens, the relevant information will be shared at the next Panel meeting and the allocations record updated to reflect the removal of the child.
- 6.14.** No proviso to the placement of a child through the Fair Access Panel may be made by any school, such as acceptance only on the basis of a trial period or meeting certain attendance criteria. However, this does not remove the school's right to enforce Alternative Provision attendance for any child on their roll and does not override any appropriate dual-registration arrangements relating to transition from an APA.
- 6.15.** Children allocated a place at the Fair Access Panel must be put on the roll of the allocated school within 10 school days of that meeting, even if the child will continue at an APA until their reintegration is arranged, during which time they will be dual-registered. Where the child is in an APA, a period of review and continued support will be agreed between the school and the academy to support a successful reintegration. This will be led by the APA's exit strategy/reintegration plan for the child and in line with the APA's Admissions Arrangements Policy. Where a school has trouble making contact with a parent to arrange admission, the child must still be added to the school roll and normal attendance procedures should then be followed.
- 6.16.** Where a school wishes to challenge a decision by the Fair Access Panel or a request to take under the Protocol, the case will be reconsidered by the Head of Education Access and Sufficiency. If an agreement cannot be reached, the Head of Service, Learning and Achievement will decide on an appropriate course of action, including consideration of whether or not the process of Direction, in line with Admissions Code 2014, should be followed.
- 6.17.** Due to the number and dispersal of **primary schools** in Cornwall, a system of Fair Access Panels will not operate for primary school applications. Primary-aged children who meet the criteria under Section 6.3 should be placed, as far as possible and as quickly as possible, in a school close to the child's home address, although parental preference will be the first consideration for each placement. To this end, a school will be required to take a child where it is the highest named preference on the application form that does not fall into any of the following categories:

- i. the school has been judged by Ofsted in the last six months to be inadequate following a Section 5 inspection or Section 8 monitoring visit (i.e. is judged to require Special Measures or to have Serious Weaknesses), or is otherwise considered by the LA as needing significant support;
- ii. the year group is full (up to the PAN)*;
- iii. to admit an extra child would breach the Infant Class Size Legislation, unless the child would be a permitted exception under the School Admissions Code (paragraph 2.15);
- iv. the Fair Access limits under Section 6.20 have been reached;
- v. there are reasons why the school would not be a suitable placement, as identified by the Head of Education Access and Sufficiency in consultation with relevant professionals/colleagues, including potential transport provision that would not be cost-effective.

*However, if all preferred schools are full or fall into any of the other categories in this section, the definition of 'full' when looking at other schools will be defined as 'not more than 5% over PAN', as defined in Section 5.

- 6.18.** If it is not possible to place the child at one of the preferred schools, the Head of Education Access and Sufficiency will request placement of the child at a suitable school nearest to the home address that does not fall into any of the categories listed under Section 6.17.
- 6.19.** The Head of Education Access and Sufficiency will write to the identified school stating an intention to place the child under the provisions of the Protocol in the relevant year group, providing the Pupil Profile and any other relevant information, giving the school five days to respond to the intention letter after which the child will be allocated and must be accepted on roll. If the school does not wish to admit the child, they must respond in writing within five school days setting out their reasons for refusal which will be reviewed by the Head of Education Access and Sufficiency.
- 6.20.** Primary schools will not be expected to take more than one child under Level 2 of the Protocol in each cohort within a 'rolling year' and no more than two overall in the school within a 'rolling year'. Formal managed moves (i.e. those that are arranged through the LA) will count towards these limits. Therefore, a child under Section 6.3 placed through the Protocol will be considered against future proposed placements for a further five half terms from the date of the placement. The 'rolling year' in the Protocol is defined as 'across six half-terms' rather than between specific dates.

7. Provision for children not ready for mainstream schooling or for whom discussions about a school place are ongoing

- 7.1.** Children living in Cornwall who do not have a school place and for whom it is considered that a period in alternative provision is appropriate prior to reintegration to mainstream schooling or who have been permanently excluded will be provided for through Acorn Academy Cornwall, the commissioned provider of Alternative Education Provision in Cornwall. Places at Acorn Academy Cornwall are either commissioned by the LA or directly by schools via the Behaviour for Learning Partnerships. A decision on whether or not alternative provision is the most appropriate placement will be made by the Head of Education Access and Sufficiency in consultation with professionals involved with the child.
- 7.2.** During the process of securing a school place through the Fair Access Protocol, if discussions are ongoing or a decision needs to wait until the next Fair Access Panel and the child has been or will be without an education placement for more than 20 school days from the commencement of the admissions process (i.e. receipt of an in-year application by the School Admissions Team), Acorn Academy Cornwall will be asked to provide a place for the child to ensure that they are not out of education for an excessive amount of time, subject to the individual circumstances of the case and spaces available and in accordance with the Acorn Academy Cornwall Admission Arrangements policy.

8. Managed Moves

Children with a history of challenging behaviour that are on a school roll for whom a new school place is requested should normally be considered under the Managed Move Protocol rather than the Fair Access Protocol. However, under either Protocol, it should be remembered that parents are entitled to express a preference for a school at any point during the school year and Managed Moves should be arranged with the co-operation of the parents. The Department for Education's guidance 'Exclusion from maintained schools, academies and pupil referral units in England' (September 2012) states: 'Maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour. A pupil can also transfer to another school as part of a "managed move" where this occurs with the consent of the parties involved, including the parents.' The Local Authority's Managed Move Protocol should be referred to and where such arrangements are made with the full support of the LA, these moves will be considered in relation to Fair Access (Level 2) placements at receiving schools to ensure an equitable distribution of children with challenging behaviour. For eligible children with challenging behaviour that are unplaced outside the normal admissions round, Section 6 of this Protocol will apply.

9. Review

The effectiveness of the Protocol will be monitored by the Head of Education Access and Sufficiency in conjunction with the Fair Access Panel members and formally reviewed annually. The LA will report on admissions under the Protocol in its annual report to the Schools Adjudicator.

BLANK PAGE

If you would like this information
in another format please contact:

**Cornwall Council
County Hall
Treyew Road
Truro TR1 3AY**

Telephone: **0300 1234 100**

Email: **enquiries@cornwall.gov.uk**

www.cornwall.gov.uk