



Fair Access Protocol

for the admission of children and young people to all schools in Cornwall

July 2013 Version 1.2

Principles of the Fair Access Protocol

There is a clear expectation from the Secretary of State that all schools (including academies) and local authorities should work together to identify a school place for those children who have had difficulty finding one. All schools are expected to respond to requests by local authorities to admit a child under fair access protocols within seven calendar days.

(Source: Department for Education – March 2013)

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.

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.

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.

(Admissions Code 2012)

1. Introduction

- 1.1. This Protocol is written in accordance with the Admissions Code 2012 issued under S84 School Standards and Framework Act and applies to all community, voluntary-controlled, voluntary-aided, foundation, trust and academy/free schools.
- 1.2. The Local Authority is required to have a Fair Access Protocol to ensure that, outside the normal admissions round, unplaced children, especially the most vulnerable, can be offered a place at a suitable school in the home local authority as soon as possible.
- 1.3. The majority of in-year admission applications will be straightforward and places will be allocated immediately where the number on roll in the year group in question is below the Published Admission Number (PAN) or the agreed admission number if that is different. However, if a preference cannot be met, the application will then be considered to see whether priority can be given to the application under the Fair Access Protocol (Stage 1). Parents will, therefore, be invited to identify whether they consider their child to be in one of the categories detailed in Section 3.1. **It should be noted, however, that there is no duty upon the Admission Authority or the Local Authority to comply with parental preference when allocating places through the Fair Access Protocol.**

2. Interpretation

In this Protocol:

"the Code" means the Admissions Code 2012;

"Alternative Provision Academy" or "APA" – this facility used to be known as the Pupil Referral Unit or Short Stay School where pupils who have been permanently excluded attend until they are ready to be reintegrated back into mainstream education;

"Challenging behaviour" means a pupil who exhibits behaviour that is persistent and ongoing despite school intervention under its behaviour and discipline policy.

"the LA" or "the Local Authority" means The Cornwall Council acting in its capacity as local authority;

"primary education" has the same meaning as in section 2(1) of the Education Act 1996;

"secondary education" has the same meaning as in section 2(2) of the Education Act 1996;

"primary school" has the same meaning as in section 5(1) of the Education Act 1996;

"secondary school" has the same meaning as in section 5(2) of the Education Act 1996;

"school" means a community, foundation, voluntary, academy or trust school;

"foundation schools" means such of the schools as are foundation schools;

"VA schools" means such of the schools as are voluntary-aided schools;

"trust schools" means such of the schools as are trust schools;

"academy" means academy schools, free schools and studio schools;

"in-year admission" means any application for a place in any year group at a school which is received after 31 August in the specified year;

"Admission Authority" means the Local Authority for community or voluntary-controlled schools or the governing body for foundation schools or voluntary-aided schools or the academy trust for academies/free schools;

"PAN" means the Published Admission Number for the year of entry at a school;

"Pupil Placement Panel" or "PPP" or "The Panel" is the decision-making body which applies the Fair Access Protocol Stage 2 and is described in section 5 of this Protocol.

3. Fair Access Protocol Stage 1

- 3.1. The categories of children who would qualify for consideration under the Fair Access Protocol (Stage 1) are:
- i. children who have been out of education for two months or more;
 - ii. children whose parents have been unable to find them a place within a reasonable travelling distance after moving to the area because of a shortage of places ("reasonable travelling distance" for a secondary age child would usually be 10 miles, extended to 18 miles for those living in the designated area of Budehaven Community School and 5 miles for a primary aged child, with travelling times not exceeding 75 minutes for a secondary child and 60 minutes for a primary child);
 - iii. children withdrawn from schools by their family, following fixed term exclusions and unable to find another place;
 - 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 known to the police or other agencies;
 - viii. children without a school place and with a history of serious attendance problems (less than 85%);
 - ix. children who are carers;
 - x. children with special educational needs (but without a statement);
 - xi. children with disabilities or medical conditions;
 - xii. children returning from the criminal justice system or Alternative Education Provision who need to be reintegrated into mainstream education;
 - xiii. children for whom a managed move is considered appropriate;
 - xiv. children who, following an overturn of an exclusion appeal have no school place;
 - xv. children of UK service personnel and other Crown Servants.

Where applicable, parents would be required to provide evidence, which will be reviewed by the LA, if they state that they consider their child to meet one or more of the above criteria.

- 3.2. For the children in the categories defined above, if the preference is for a designated or nearest school and that school is not already 5% above PAN or agreed operational capacity for the relevant year group, the LA will allocate a place at that school. If the preference is not for the designated or nearest school and there are reasons why the local school would not be an appropriate placement, the LA will allocate a place at the preferred school, as long as that school is not already 5% above PAN or agreed operational capacity for the relevant year group. If no preferences can be met, the LA will name an alternative school as nearest school with room, irrespective of PAN. This school would usually be the nearest appropriate school to the child's address that is not more than 5% above PAN or agreed operational capacity in the relevant year group.
- i. The 5% will be rounded down to the nearest whole number.
 - ii. 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 PAN in each year group under this policy.
 - iii. No children will be placed above PAN in a school in special measures or serious weaknesses.
 - iv. Children would not usually be placed above PAN in a primary school if this would compromise an infant class size of 30, apart from in the case of 'excepted pupils' in accordance with 2.15 of the School Admissions Code.
 - v. The 5% "ceiling" does not prevent a school being named in a statement of special educational needs, or a child in care or a child previously in care being placed at that school or a child being placed in a school under the reintegration protocol below.
 - vi. There is no duty to comply with parental preference when allocating places through the Fair Access Protocol. If a place is allocated and the parent refuses to accept it then the school should refer the case to the Education Welfare Service for non attendance. However the pupil must be placed on roll.
 - vii. The parent retains the right to appeal for a school place at any school for which they have expressed a preference.
- 3.3. The Pupil Placement Panels will receive regular reports of places allocated at schools in their area under this stage of the Protocol.

4. Fair Access Protocol Stage 2: Reintegration

- 4.1. A minority of children will be deemed to have challenging behaviour and the LA must ensure that all schools admit their fair share of these children. The LA must also consider whether the needs of children with challenging behaviour would best be met in mainstream schooling or in another setting, such as a further

education college. The children who would be considered for placement under this part of the Protocol would include:

- children attending an Alternative Provision Academy within Cornwall or Alternative Education Provision out of County who need to be reintegrated back into mainstream education, including those with a Statement of SEN;
- children who have been permanently excluded from a school, including those with a statement of SEN;
- children who have a history of challenging behaviour as defined by the PPP;
- children who are in year 11 for whom an in-year application is made for admission to a new school from January or later; and
- children for whom an appropriate education setting has not been agreed, including those whom it has not been possible to place under the standard in-year application procedures or under the Fair Access Protocol (Stage 1).

4.2. The Code makes it clear that there is a balance to be struck between finding a place quickly and finding a place that is appropriate for the child and that no school should be required to take an excessive or unreasonable number of pupils who come under the above categories. In order to achieve this, the placement of children who are considered under the Fair Access Protocol (Stage 2) will be referred to the relevant Pupil Placement Panel.

5. Pupil Placement Panel

- 5.1. The Pupil Placement Panel (PPP) is made up of at least three representatives who are serving headteachers or senior leaders with delegated responsibility for the schools where placements are requested. The PPP is chaired by an independent representative of the Local Authority. Other professionals may be invited to attend for information such as officers of the Local Authority as appropriate such as representatives of the Children in Care Education Support Service or the SEN Assessment and Provision Team.
- 5.2. Only PPP members and the Chair have voting rights.
- 5.3. The PPP will determine which schools pupils are placed in under the Fair Access Protocol.
- 5.4. There will be six area panels which will meet half-termly, linked to the area Behaviour for Learning Partnership meetings.
- 5.5. Schools will be advised in writing within 2 school days when a first preference has been made under Fair Access.
- 5.6. The panel will consider in order of preference:
- Parental preference;
 - Number of admissions to the preferred school under the Fair Access Protocol in that academic year;
 - Distance to school measured by the nearest available route as determined by Cornwall Council's Geographical Information System (dataMap);

- Relevant background evidence to refuse parental preference.
- 5.7. School submissions to deny parental preference may include:
- i. PAN, NOR for relevant year group;
 - ii. mobility for relevant year group;
 - iii. attainment for relevant year group;
 - iv. percentage of pupils supported through Statement of Special Educational Needs in relevant year group.

6. Main principles of the Stage 2 Protocol

- 6.1. The purpose of the Protocol is to ensure a fair distribution of hard to place pupils with challenging behaviour across schools.
- 6.2. All schools within Cornwall agree to fully participate and work within the Fair Access Protocol.
- 6.3. All schools within Cornwall are responsible for all children applying to Cornwall schools.
- 6.4. Every child has the right to be educated.
- 6.5. Children allocated a place at the PPP must be put on the roll of the allocated school within 5 school days of that meeting.
- 6.6. The mobility of children within the LA should be reduced.
- 6.7. Schools should work together and support each other in ensuring a fair distribution of hard to place pupils across all schools.
- 6.8. Schools must have effective reintegration processes.
- 6.9. Schools must work, with the appropriate support mechanisms, to engage the parent and child towards regular and effective attendance.
- 6.10. No school can be full to permanently excluded pupils/hard to place pupils where that school is the designated school based on the Protocol.

7. Achieving an equitable distribution of Stage 2 pupils

- 7.1. Each secondary school will be given an initial limit of admitting two Stage 2 pupils in each year group every academic year.
- 7.2. The PPP will make the final decision as to whether a case will be determined as hard to place (with challenging behaviour) and which school will be nominated to receive each case.

- 7.3. Where a school is full, this will not be cause to reject a placement. If the school can show significant Health & Safety grounds for the rejection of a pupil, the case must be made to the Behaviour for Learning Partnerships.
- 7.4. Where a school permanently excludes a pupil, the PPP will review the limits in 7.1 for that school.

8. Considering applications

- 8.1. All applicants should complete an in-year application form.
- 8.2. The Access and Infrastructure Manager will provisionally deem cases to be hard to place. This can only be done before a child is admitted to school. Where appropriate, additional background evidence will be sought in each case to support the Panel decision making process.
- 8.3. Cases provisionally identified as Stage 2 will be added to the agenda of the Pupil Placement Panel for the appropriate area. The Panel will allocate each child to an appropriate school.
- 8.4. The appropriate school will be considered initially by parental preference. The School Admissions Team will encourage all applicants to consider naming their maximum of three preferences to reduce the likelihood of the Panel allocating an unnamed school.
- 8.5. The Panel will refer the paperwork back via the Access and Infrastructure Team to maintain statistics and to pass the paperwork to the allocated school.
- 8.6. Children to be placed through the Fair Access Protocol take precedence over children on any waiting list the school or LA may hold.
- 8.7. If the child is not allocated their first preference school, they will have a right of appeal against each school which was not offered but named above the allocated school. They will also have a right of appeal against an allocated school if it was not named as a preference. If the school chooses to admit the child instead, this will count towards the two placements referred to under 7.1. (The right of appeal is withdrawn for a child who has been twice permanently excluded.)
- 8.8. Once a child has been allocated a school place by the Panel, appropriate provision should be provided for the child within 5 school days after notification of the decision, with the exception of children being reintegrated from an Alternative Provision Academy or other Alternative Education Provision. The schools will notify the School Admissions Team of the admission date in each case.
- 8.9. Where the child is in an Alternative Provision Academy, a period of review and continued support will be agreed with the school to try and ensure a successful reintegration.
- 8.10. Once a school has informed the School Admissions Team that a start date has been agreed, they will inform Finance to invoke any necessary financial arrangement for permanently excluded children.

8.11. Timeframe

Stage 1	Stage 2	Stage 3	Stage 4
Fair Access application identified and parent informed that application has been referred.	School informed that a first preference under fair access has been made, and when the Pupil Placement Panel will meet to discuss.	Fair access application is considered by Pupil Placement Panel, decision is made.	School and parents are informed of decision, school puts on roll within 5 of the notification (unless being reintegrated from AEP)

Powers of Direction

Local authority powers of direction (general) - A local authority has the power under sections 96 & 97 of the SSFA 1998 to direct the admission authority for any maintained school in its area to admit a child even when 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 that is a reasonable distance from the child's home and from which the child is not permanently excluded. It **must not** choose a sixth-form that selects by ability unless the child meets the selection requirements, or a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources (**SA Code 3.16**).

Before deciding to give a direction, the local authority **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 local authority decides to direct, it **must** inform the governing body and headteacher of the school. The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body **must** tell the local authority. The local authority **must not** make a direction until the 15 days have passed and the case has not been referred (**SA Code 3.17**).

If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school **must** admit the child. The Adjudicator's decision is binding. The Adjudicator **must not** direct a school to admit a child if this would require the school to take measures to avoid breaking the rules on infant class sizes and those measures would prejudice the provision of efficient education or the efficient use of resources (**SA Code 3.18**).

Secretary of State Power of Direction (Academies) - Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child, and can seek advice from the Adjudicator in reaching a decision (**SA Code 3.22**).

Minutes and reporting

- 8.12. Administration of the Fair Access process and PPPs will be the responsibility of the Access and Infrastructure Team which will hold the minutes and related paperwork.
- 8.13. Minutes will be circulated within 5 working days where possible.
- 8.14. Minutes will be circulated to the PPP members and headteachers of the relevant schools.
- 8.15. Minutes will be reviewed at each Panel meeting.
- 8.16. The placements decided at the PPP will be notified to the school and parents by the School Admissions Team on the next working day where possible.
- 8.17. A report will be submitted to Schools' Forum and the Extended Directorate Leadership Team on an annual basis regarding the placement of Stage 1 and 2 children under the Protocol.

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