

Appendix 3

Addendum to Birmingham's Fair Access Protocol (2018)

- 1.1 Key changes in the new School Admissions Code as regards the fair access protocol that come into effect from 1st September 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 proposed 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.⁷⁹ Local authorities **must**

⁷⁹ 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.

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.

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 procedures⁸⁰:

- a. children either subject to a Child in Need Plan or a Child Protection Plan⁸¹ 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 arrangements⁸²;
- 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 circumstances⁸³;
- 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 place⁸⁴.

⁸⁰ 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.

⁸¹ 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).

⁸² As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.

⁸³ 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.

⁸⁴ 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

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 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.