



# Fair Access Protocol



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June 2021	3	Sarah Lewis	Draft of amended version following changes to the School Admissions Code due to come into force September 2021
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# 1. Interpretation

In this Protocol:

‘school’ means a community, foundation, voluntary-controlled (‘VC’), voluntary-aided (‘VA’), or trust school which is maintained by Cornwall Council or an academy or free school (but not a special school);

‘in-year application’ means any application for a school place in Years R to 11 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. ‘AN’ means the Admission Number for all year groups other than the year of entry to a school. The PAN/AN is the maximum number of children that can be admitted to that year group.

‘Unplaced’ in this Protocol will include children that remain on the roll of a school but no longer have a school place that is within reasonable travelling distance of the home address.

‘Reasonable travelling distance’ for a secondary age child is considered to be 10 miles, extended to 18 miles for those living in the designated area of Budehaven Community School with travelling times not exceeding 75 minutes. For a primary age child it is considered to be 5 miles with travelling times not exceeding 45 minutes. The distances are measured as the shortest available route as determined by Cornwall Council’s Geographical Information System. This is considered to be the walking route of up to two miles for primary school children up to the end of Year 3 and three miles from Year 4 onwards. For schools outside these distances, driving route will be used. Unlike when eligibility for free home to school transport is assessed, the suitability and safety of the walking route is not taken into consideration when determining these distances. Any exceptions to this definition will be decided by the Nominated LA Officer.

‘Challenging behaviour’ as defined in the School Admissions Code 2021: ‘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 can tolerate. We would expect this behaviour 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. Introduction and principles

- 2.1.** This Fair Access Protocol (‘the Protocol’) is written in accordance with the School Admissions Code 2021 (issued under Section 84 of the School Standards and Framework Act 1998) and applies to all schools in Cornwall.
- 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 PAN or AN. However, the Admissions Code 2021 states: ‘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’. In

addition: ‘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’.

- 2.3. 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 (Admissions Code 2021, 3.18).
- 2.4. Children in Care<sup>1</sup> (also known as ‘looked after children’ and/or children with an Education, Health and Care (EHC) Plan will be supported by different processes. These children will be referred through Cornwall Council’s Virtual School and/or Statutory SEN Service as appropriate.
- 2.5. Children that were previously in care<sup>2</sup> can be considered under the Protocol, however the School Admissions Code 2021 states: ‘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 an admission authority promptly’.
- 2.6. Children placed through the Protocol take precedence over children on a school’s waiting list.
- 2.7. 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.
- 2.8. Where a school refuses to take a pupil under the Fair Access Protocol, Cornwall Council will consider whether the process of Direction, in line with the Admissions Code 2021, should be followed.
- 2.9. In the first instance, the School Admissions Team will consider whether or not an in-year application falls under the Fair Access Protocol. Where a final decision is needed on whether or not the application falls under the Protocol, the application will be referred to

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<sup>1</sup> 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).

<sup>2</sup> 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.

the Nominated LA Officer<sup>3</sup> 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.

- 2.10.** Where it has been agreed that a child will be considered under the Protocol, a school place must be allocated for that child within 20 school days (in accordance with the School Admissions Code 2021).
- 2.11.** Due regard must be given when following this Protocol to the Children’s Rights under the United Nations Convention on the Rights of the Child (UNCRC). These include, but are not limited to, the right to Education (Article 28, UNCRC) and goals to Education (Article 29) and for decisions to be made in their Best Interests (Article 3), rights to non-discrimination (article 2), to receive support to develop to their full potential (Article 6), receive special support to recover from trauma (Article 39) and to have their views heard and taken seriously in relation to any matters affecting them (Article 12).

### 3. Eligible children

- 3.1.** The categories of children who qualify for consideration under the Fair Access Protocol are prescribed by the School Admissions Code 2021:
- a. children either subject to a Child in Need Plan or a Child Protection Plan 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 able to be supported in 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 3.10 of the School Admissions Code;
  - k. children for whom a place has not been sought due to exceptional circumstances;

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<sup>3</sup> The ‘Nominated LA Officer’ will be a senior officer within the Together for Families Directorate (Education)

- i. 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.

Expanded definitions can be found in the School Admissions Code 2021:

<https://www.gov.uk/government/publications/school-admissions-code--2>

## 4. Behaviour referrals (Fair Access Protocol ‘Level 2’)

**4.1.** Placements for the following eligible children (from the list in 3.1) will automatically be handled under the Fair Access Protocol, described as ‘Level 2’ placements:

- 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 able to be supported in mainstream education.

**4.2.** The Admissions Code 2021 states that ‘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 back the Local Authority under the Fair Access Protocol’. These children will also be considered under Level 2 of the Protocol.

- i. This will only apply where the child **does not have a school place within reasonable travelling distance** and cannot, therefore, be considered under the Managed Move Protocol.
- ii. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children.
- iii. The provision cannot be used to refuse admission to looked after children, previously looked after children and children who have an Education, Health and Care Plan naming the school in question.
- iv. 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.
- v. A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act.
- vi. Referrals will be reviewed by the Nominated LA Officer who will consider if it is appropriate to seek a place at a school under the Fair Access Protocol or whether normal admissions procedures should be followed.

### 4.3. Managed Moves

Children with a history of behaviours that challenge 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 parent. 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.' Cornwall Council's Managed Move Protocol should be referred to and where such arrangements are made with the full support of Cornwall Council, these moves will be considered in relation to Fair Access placements at receiving schools.

### 4.4. Elective Home Education Returners

For children returning from Elective Home Education who remain unplaced and where they are defined as exhibiting challenging behaviour, the previous school will generally be expected to take the pupil back on roll (unless the pupil was permanently excluded from the school).

The following principles will be applied in relation to EHE pupils returning to the previous school:

- i. Placement at the previous school will not count towards allocations on the Rolling Record.
- ii. Following readmission the previous school would be expected to continue to follow its behaviour policy and arrange alternative education provision or a Managed Move as appropriate.

Exceptions to placement at the previous school will be applied as follows:

- iii. The previous school would not be expected to take the pupil back on roll if the family has moved outside reasonable travelling distance.
- iv. The previous school would not be expected to take the pupil back on roll if the school is not listed by the parent as a preference **and** there are reasons why it would not be in the best interests of the pupil, as agreed by the Nominated LA Officer in consultation with linked professionals as necessary. In this situation the normal Fair Access process would be followed and the subsequent allocation would be recorded on the Rolling Record.
- v. In the case of primary schools, the previous school would only be expected to take the pupil where the year group is not already more than 5% over its PAN or AN and the

admission would not breach the Infant Class size limit. However, Cornwall Council may still need to request the admission if there are extenuating circumstances.

- 4.5.** No proviso to the placement of a child through the Protocol 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 education provision attendance for any child on their roll and does not override any appropriate dual-registration arrangements relating to transition from an APA.
- 4.6.** Children allocated a place through Level 2 of the Protocol must be put on the roll of the school within 10 school days of the place being allocated. This includes situations where the child will continue at an APA until their reintegration is arranged, during which time they will be dual-registered between the school and APA. Where the child is at an APA, a period of review and continued support will be agreed between the school and the APA 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.
- 4.7. Provision for permanently excluded children and children not ready for mainstream schooling**

Children living in Cornwall who do not have a school place and for whom it is considered that a period in alternative education provision is appropriate prior to reintegration to mainstream schooling or who have been permanently excluded will be provided for through the commissioned provider of Alternative Education Provision in Cornwall. A decision on whether or not alternative education provision is the most appropriate placement will be made by the Nominated LA Officer in consultation with professionals involved with the child.

- 4.8.** There may be cases where the parent of a permanently excluded child refuses Cornwall Council'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, Cornwall Council 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.

## 5. Considering applications

- 5.1.** In general, a direct approach will be made to a school advising of the intention to place the child under the Fair Access Protocol. Cornwall Council will approach a school that is assessed as suitable, with reference to the criteria listed in 5.2. An explanation of this decision and supporting information will be provided to the school.



- 5.2.** The following points will be taken into account when considering placement under the Fair Access Protocol, but consideration will not be limited to these:
- the individual circumstances of the case including the child’s home lived experience, the views of the child and the best interests of the child;
  - parental preference;
  - 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 Cornwall Council as needing significant support) and the appropriateness of the placement in light of this, with the emphasis on the best interests of the child;
  - PAN or AN and number on roll (NOR) for the relevant year group and the school’s overall capacity to support further admissions. Consideration will be given to whether or not the school is already more than 5% over its PAN or AN;
  - number of admissions to the relevant year group in the preferred school in the ‘rolling year’ under the Fair Access Protocol (in relation to Level 2: behaviour);
  - all current cases due to be considered for the same year group and the impact of taking more than one child under the Protocol at the same time;
  - 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 (as long as this does not take priority over the best interests of the child);
  - whether or not the school is the designated school for the home address and the availability of places at other schools within reasonable travelling distance;
  - evidence to support refusing parental preference, such as a previous serious breakdown of the relationship between the family and the school.
- 5.3.** Schools must respond to Fair Access requests within 2 school days, or in the case of children under Level 2 of the Protocol, 5 school days.

### **Children without a school place due to a shortage of places**

- 5.4.** Under 3.1(l), whilst the 2021 Code specifies that this provision is for children that have been out of education for four weeks or more, a request may still be made to a school ahead of the four weeks being exceeded to ensure there is no undue delay.
- 5.5.** Under this provision, where all schools within a reasonable distance of the home address have been found to be full in the relevant year group, a suitable school will be expected to admit the pupil if it is not more than 5% above PAN or AN in the relevant year group. The 5% will be rounded down to the nearest whole number. For primary schools with a PAN or AN less than 20, 5% would be 0. As a result, these schools would be required to admit one child above the PAN or AN in the year group. The school will generally be the closest school to the home address that meets these criteria but consideration will 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.

## **Pupil Placement Partnership (PPP)**

- 5.6.** Applications for children falling under 'Level 2' [3.1 (c), (d) or (j)] are more likely to be referred to the PPP for placement due to their complexity. Other placements with complex factors or children who remain unplaced following a direct approach under the Fair Access Protocol may also be considered by the PPP.
- 5.7.** The PPP process ensures that a place can be secured at a suitable school as soon as possible whilst 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.
- 5.8.** The PPP meets weekly on a Wednesday during term time in accordance with the PPP Terms of Reference.
- 5.9.** Schools will be invited to the PPP meeting where relevant to the placement to be considered, as identified by the Nominated LA Officer.
- 5.10.** Non-attendance by a school representative at a PPP meeting does not preclude a decision to place a child at that school and these decisions are still binding. School participation, as required by the School Admissions Code 2021, includes making available a 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.
- 5.11.** Additional background evidence will be sought in each case to support the PPP decision-making process. Cornwall Council will gather information in relation to the child from their previous school, as far as possible, including behaviour support records, attendance information and curriculum/progress information.
- 5.12.** When deciding on a placement, the PPP will consider the factors listed in 5.2 of this Protocol.
- 5.13.** A 'Rolling Record' will operate for all placements of children under the Fair Access Protocol Level 2.
- 5.14.** Secondary-age children placed under Level 2 of the Protocol, along with formal Managed Moves (confirmed through the Education Welfare Service), will be considered in relation to future Fair Access Level 2 placements for a further five half terms from the date of the PPP decision. The 'rolling year' is defined as 'across six half-terms' rather than between specific dates. Schools may also request that placements of children with challenging behaviour outside the Fair Access Protocol be counted on the rolling record and this will be considered by the Nominated LA Officer and is only likely to be accepted where there is evidence that the child was previously at risk of permanent exclusion. This will include

children with an Education, Health and Care Plan or Children in Care who are not considered under the Fair Access Protocol. A child will not be counted on the Rolling Record for a particular school if the child is no longer on roll or failed to start at the school, for whatever reason. Failed Managed Moves will continue to be shown on the Rolling Record to provide context.

- 5.15.** Primary schools will not be expected to take more than one child considered under the Protocol and defined as exhibiting ‘challenging behaviour’ 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 Cornwall Council) will count towards these limits. Therefore, a child added to the rolling record will be considered against future proposed placements for a further five half terms from the date of the placement.

## 6. Review

- 6.1.** Where a school wishes to challenge a decision by the PPP or a request to take under the Protocol, the case will be reconsidered by the Nominated LA Officer. If an agreement cannot be reached, the Service Director will decide on an appropriate course of action, including consideration of whether or not the process of Direction, in line with Admissions Code 2021, should be followed. Schools should be reminded that participation in the Protocol is a mandatory requirement of the School Admissions Code.
- 6.2.** The effectiveness of the Protocol will be monitored by the Nominated LA Officer in conjunction with the PPP Review Group and formally reviewed annually.
- 6.3.** In the event that the majority of schools in an area can no longer support the principles and approach of the Fair Access Protocol, they should initiate a review with the local authority. Admission authorities that wish to raise concerns outside of the annual review process should do this through the Cornwall Association of Headteachers (Primary or Secondary) in the first instance.
- 6.4.** Cornwall Council will report on admissions under the Protocol in its annual report to the Schools Adjudicator.

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