Fair Access Protocols

Effective from 1st September 2019

Review date: Term 3, 2019/20

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The School Admissions Code (2014)

Fair Access Protocols

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1.0 Introduction

There is a statutory requirement for the Local Authority to have in place a Fair Access Protocol which is agreed by the majority of schools in the authority, and all schools* must participate.

The purpose of the Fair Access Protocol is to ensure that outside the normal admissions round, unplaced children, especially the most vulnerable, are found and offered a place quickly, so that the amount of time any child is out of school is kept to a minimum.

The Fair Access Protocols are outside the arrangements for co-ordination and are applied when an eligible child has been unable to secure a reasonable and accessible school place through the in-year admissions process. The aim is to secure a reasonable and accessible school place as quickly as possible following the application being made, and with the pupil being on roll within 10 school days of an offer being made.

Section 3.9 of the School Admissions Code outlines that the Protocol will also 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. Where a school does not wish to admit a child with challenging behaviour outside the normal admission round, even though places are available, it must refer the application to the Local Authority for consideration under the Protocol, outlining the prejudice to the efficient education and efficient use of resources that would be caused if the child were to be admitted.

Through the Local Authority’s Fair Access Protocols our aim is to ensure that all children and young people in Leeds are safe from harm and provided with the opportunity to engage in learning.

*Throughout the remainder of this document the term ‘school’ is used to describe all Leeds community, voluntary controlled, voluntary aided, foundation schools (including Trust Schools), free schools and academies.

2.0 Principles

Whilst the Protocol is procedural, the successful operation of Leeds City Council’s Fair Access Protocols is largely due to the willingness of all schools working together with a genuine ethos of collaboration and co-operation to:

- Act with a sense of urgency to minimise a pupil’s time out of education.
- Secure appropriate school placements.
- Ensure that schools comply with decisions under the Protocol to admit pupils without delay.

Schools should work together collaboratively, taking into account the needs of the child, the needs of the school, but also the wider Area Inclusion Partnership (AIP) and its commitment to inclusion for all. When seeking to secure a place for a child under the Protocol, all schools should be treated in a fair, equitable and consistent manner.

Fair Access Protocols should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and where that application is refused, they are entitled to an appeal against the refusal.

3.0 Fair Access Protocols and Equality

The School Admissions Code outlines that schools are subject to the Public Sector Equality Duty and therefore must have due regard to the need to eliminate discrimination, harassment and
victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.

Whilst an application may be eligible for consideration under Fair Access Protocols, the application should only be referred to the Local Authority when the preferred school(s) believes that due to the child’s circumstances, they are **unable to admit the child because of the prejudice it would cause to the efficient education and efficient use of resources in the school.** Determining that the application is eligible for consideration under the Fair Access Protocols cannot, in itself, be a reason for refusal. There must be evidence of prejudice that the admission would cause.

Section 3.24 of The Appeals Code outlines that if an application has been refused, despite there being places available, the governing body **must** present their case for refusal, demonstrating how admission of the child would prejudice the provision of efficient education or efficient use of resources.

**An application should not be referred to the Local Authority simply because Fair Access categories have been identified on the application form (ICPF) as this would be considered discriminatory.**

### 4.0 Restrictions

Leeds City Council has a responsibility to all children living in Leeds (defined by the authority that council tax is paid to) to ensure that they have a reasonable and accessible school place. This Protocol applies only to children resident in Leeds and to Leeds schools. Leeds City Council will work collaboratively with all education providers in and out of the city to meet the best interests of the child / young person.

Fair Access Protocols will not apply when considering the admissions of a looked after child, a previously looked after child (subject to an Adoption Order, a Special Guardianship Order or a Child Arrangements Order) or a child with an Education, Health and Care Plan naming the school in question, as these children **must** be admitted. An application for a child currently looked after by a Local Authority must be supported by the Virtual School and a Supplementary Information Form (CLA SIF) should be completed by the Social Worker who holds parental responsibility for the child.

This applies to all schools regardless of status and is outlined in Section 3.12 of the School Admissions Code.

However, in recognition of the potential impact on resources that schools may experience when admitting looked after pupils, the number of children looked after, admitted to the school outside the normal admission round, will be considered under the ‘monitoring policy’ when considering fair sharing.

### 5.0 Waiting lists

The Protocol may require schools to admit pupils above their Published Admission Number (PAN) and ahead of pupils on their waiting list or those awaiting an appeal. Section 2.14 of the School Admissions Code outlines that looked after children, previously looked after children, and those allocated a place at the school in accordance with Fair Access Protocols, **must** take precedence over those on a waiting list.

Where a school place has been offered via Fair Access Protocols, a child will remain on the waiting list (where there is one) for the remainder of the academic year, for those schools which were listed as a higher preference on the initial application. Should a place become available, the application should be reassessed by the school under the in-year process.
6.0 Referral criteria
On receipt of the application the school(s) will make a decision on whether they are able to offer a place. If the school:

1. Refuses the application and offers the written right of appeal and
2. Identifies that the application meets one or more Fair Access categories and
3. As a result of the child meeting Fair Access criteria can evidence admitting the child would cause prejudice to the efficient education and efficient use of resources in the school.

The application should be referred (using the Local Authority referral form) to the Local Authority for consideration under the Protocol.

The Local Authority will ensure applications for children who require a school place are considered by the appropriate Fair Access panel(s). This will include any child who is in unplaced (a child without an offer of a reasonable and accessible school place) including:

- Children who are new to Leeds
- Where a house move within Leeds has resulted in the current school place becoming inaccessible (regardless of AIP boundaries), the in-year transfer application should be made within 6 months of the house move.
- Children who are withdrawn from private education/college and EHE and a place at school has been requested.
- Applications where the Fair Access Manager and Chair of the Panel agree in advance of the Panel that there are evidenced exceptional circumstances for an application to be presented to the Panel despite the child already being on the roll of an accessible school.

*The Education Act defines reasonable and accessible as outlined below and in each case measured by the nearest available route:

"walking distance"— 2 miles in relation to a child who is under the age of 8 and 3 miles in relation to a child who is 8 or over

Any child who already has an accessible school place, will still have the right of appeal against the refusal to admit. Schools should ensure that they can demonstrate their reasons for refusal. Where a child has a reasonable and accessible school place, these applications will not be considered under Fair Access Protocols as they are not deemed to be unplaced.

7.0 Fair Access categories

An application should not be referred to the Local Authority to be presented at Fair Access Panels simply because Fair Access criteria has been identified as this would be considered discriminatory. Where a pupil’s application is identified as meeting Fair Access criteria, their application can only be refused and referred for consideration under Fair Access Protocols where the school can clearly demonstrate the prejudice that would be caused by admitting the pupil.

**Mandatory categories (determined by the Department for Education):**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>A</td>
<td>Children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education</td>
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<td>B</td>
<td>Children who have been out of education for two months or more</td>
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<td>C</td>
<td>Children of Gypsies, Roma, Travellers, refugees and asylum seekers</td>
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<tr>
<td>D</td>
<td>Children who are homeless</td>
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<td>E</td>
<td>Children with unsupportive family backgrounds for whom a place has not been sought</td>
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<tr>
<td>F</td>
<td>Children who are carers</td>
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<tr>
<td>G</td>
<td>Children with special educational needs, disabilities or medical conditions (but without an Education, Health and Care Plan)*</td>
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Where an application identifies with any of these categories, schools are required to demonstrate how admission of the child would prejudice the provision of efficient education or efficient use of resources.
Schools and colleges must use their best endeavours to ensure that such provision is made for those who need it.

<table>
<thead>
<tr>
<th>Locally agreed categories:</th>
<th>This refers to attendance within the current academic year, except in half term 1 when attendance from the last academic year should be taken into consideration.</th>
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<tr>
<td>1</td>
<td>Children with less than 85% attendance</td>
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<td>2</td>
<td>Children whose behaviour has resulted in extensive support strategies/personalised intervention being implemented and/or who are at risk of being permanently excluded</td>
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<td></td>
<td>Children returning from Elective Home Education</td>
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<td></td>
<td>Children whose parents have been unable to find them a place after moving to the area, because of a shortage of places within a 'reasonable' distance</td>
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It is important to recognise that not all children and young people whose application identifies with these categories will have difficulty securing a school place. Many will be admitted successfully through the usual in-year admission process.

Where a school receives an application and is able to offer a place, they should inform the Local Authority that they can offer a place and arrange admittance within 10 school days. **Awaiting the next Panel date is not a reason to delay admittance.**

Any application referred by a school for admission under Fair Access Protocols will be reviewed by the Admissions Team. If the child has a reasonable and accessible school place they will not be presented for consideration at Fair Access Panels unless there are evidenced exceptional reasons submitted in advance and agreed by both the Chair and Fair Access Manager.

**8.0 School decision making**

The School Admissions Code (2014), clearly states that schools must not refuse to admit a child solely because information has not been received from their previous school.

Before refusing an application and referring to the Local Authority, schools must ensure they have fulfilled their duties in line with the Admissions Code, and are responsible for sourcing any information they deem necessary to be able to consider the application. Where the application has been refused and appropriately referred to the Local Authority all relevant information should be shared in order for it to be included on the log and made available to Panel representatives.

Any relevant information should be included on the Local Authority referral form to assist the Fair Access Panel to secure the most appropriate offer of a school place. The AIP (through the Re-inclusion Officer role or equivalent) may also be able to support in collating background information and relevant information to support a pupil’s transitional needs.
9.0 Operation of Fair Access Panels

Leeds City Council, in partnership with the AIP, will arrange Fair Access Panel meetings on a monthly, or as near as possible, basis accommodating school terms and school holidays. The attendance of the Chair of the Fair Access Panel, a member of the Admissions Team and one Headteacher will make the meeting quorate. Where the school representative attending the Fair Access Panel is not the Headteacher, the representative is expected to have the autonomy to act on behalf of the Headteacher.

In exceptional circumstances it may be necessary to hold a multi-agency meeting before an offer of a school place can be made. Where a multi-agency meeting is required, this must be agreed by the Panel and take place no later than 10 school days after the Panel. The AIP are responsible for providing provision whilst a school place is confirmed/sought.

Where a Fair Access Panel considers that a child is not yet ready for mainstream provision, they will allocate a child to a school roll and will consider which of their local partnership provisions, is best able to enhance the pupil’s readiness to learn and enable their re-integration into a mainstream setting. The school, with support from the AIP, is then responsible for securing appropriate full-time educational provision.

Each young person that is referred to the Panel will be discussed individually and the decision will be made by those in attendance at the Fair Access Panel as to which school they believe should admit the pupil, taking the pupil’s best interests and parental preference into consideration wherever possible (although there is no duty to comply with parental preference).

If a school is not identified by the Panel, the Local Authority will ask a school within a reasonable and accessible distance to admit as a Local Authority ‘instruction’. Where the Local Authority asks a school to admit a pupil in line with Fair Access Protocols, the school is expected to respond within 7 calendar days.

No young person will go without the offer of reasonable and accessible school provision.

Unless there is a significant change of circumstance (such as a house move within the last 6 months) resulting in the child no longer having a reasonable and accessible school place, an application will only be considered by the relevant Panel(s) once per academic year.

10.0 Sibling considerations

As a child friendly city, and to promote attendance and attainment, where applications are considered at Fair Access Panels for siblings, every effort will be made to place the siblings together regardless of AIP area boundaries. Where AIP area boundaries and year group restrictions cause prejudice to a family, all reasonable and accessible schools in each relevant area will be taken into consideration.

11.0 Returning to Leeds/from EHE

Parents have the right to apply for a school place at any school regardless of their previous address or previous schools attended. The school receiving the application should consider the application and can only refer for consideration under Fair Access Protocols where they can demonstrate that the admission of the pupil would cause prejudice to the education of those already on roll, or the efficient use of resources.
Where a child has previously been on roll at a Leeds school, it is expected that they should return to the previous school under the Protocol, providing it remains reasonable and accessible from the home address.

Where a child leaves the city and returns at a later date, or is returning to mainstream education from Elective Home Education (EHE), College or Private Education, they should return to the school they previously attended unless they were permanently excluded. Reintegration support may be available from the AIP.

When returning from EHE, the locally agreed approach is that the child should be admitted to the roll of their last known school without delay. Unless:

- The previous school is no longer reasonable and accessible.
- Class size legislation applies at the previous school.**
- Written evidence of exceptional circumstances is submitted to the Panel outlining exceptional circumstances.

Where there are exceptional circumstances (such as safeguarding concerns supported with written evidence), these should be presented to the Panel who will determine whether or not it is in the best interests of the child to return to the previous school. Where exceptional circumstances are presented and upheld by the Panel, an alternative offer will be made by the panel.

**Where class size legislation applies, all reasonable and accessible schools will be considered within the home wedge in order to make a suitable offer of a school place.

12.0 Safeguarding

There is a collective responsibility to ensure the safeguarding of all young people and we must work together to protect them and act in their best interests.

Once it has been agreed either in advance of a Panel or at a Fair Access Panel that a child should attend a named school, that school is accountable for the young person and is responsible for securing attendance as quickly as possible and they should be on roll within 10 school days.

Where a child’s whereabouts is unknown, all reasonable enquiries should be made. If the student’s whereabouts remains unknown, the child will be referred to the Children Missing Education (CME) Team by the allocated school.

When a school place has been allocated but parent(s) have not taken up the offer within 10 school days, the school should provide the Panel/Local Authority with details of the reasonable enquiries made (including phone calls, emails, letters and home visits to the family). The Local Authority may pursue a School Attendance Order where necessary and the place at the agreed school should remain available to the young person throughout this process.

13.0 Record Keeping

The AIP keeps accurate minutes as a record of each Fair Access Panel meeting. Minutes will be distributed as soon as possible, but at least 10 school days before the next Fair Access Panel in order to allow schools and professionals to collate relevant updates.

Panel members should advise of any anomalies recorded in the minutes within 5 school days of distribution. After such time, the minutes will be considered an accurate record of the meeting. Schools, Chairs of the Fair Access Panels and the Local Authority should all keep a record of the outcomes of the meetings, including reasons for refusal submitted by schools.
14.0 Fair Access Panel outcome

Where a child is offered a school place, it is the responsibility of the school making the offer to arrange contact with the family without delay. The school must meet with the parent/carer of the young person and agree a start date no later than 10 school days after the Fair Access Panel meeting/instruction. In exceptional circumstances where this is not possible, records of actions taken to facilitate this meeting should be submitted to the Panel. Where a school has not agreed a start date for the child within the appropriate timescale, the Local Authority may escalate the case for intervention to secure admittance.

In all cases, the Local Authority will relay the outcome of the Fair Access Panel in writing to the parent/carer of the young person as soon as possible, but within 14 calendar days of the panel decision. The Local Authority will provide further right of appeal to include all schools represented at the panel.

Under regulation 12 of the Education (Pupil Registration) (England) Regulations 2006 as amended, schools are required to notify the Local Authority within five days when a pupil's name is added to the admission register at a non-standard transition point. This process for notifying the Local Authority is via the 'pupil movement' forms to the Admissions Team.

15.0 Local Authority ‘instruction’ to admit

If a Fair Access Panel discussion does not result in an offer of a school place, the Local Authority will ‘instruct’ a school to admit the child. This is the locally agreed approach, prior to seeking any formal direction as outlined in the School Admissions Code. In deciding which school to instruct, the Local Authority will consider the following factors:

- Any personal circumstances relevant to the young person.
- All schools that are reasonable and accessible from the home address.
- The principles of fair sharing within the current academic year.
- Any relevant reports from the AIP team.
- Each schools reasons for refusal outlining the prejudice which the admission would cause.

If a school refuses to admit following an instruction from the Local Authority, they should submit written objections to the Fair Access Manager within 7 calendar days. The Local Authority will consider any objections and work with the school to try and agree a resolution. Where a resolution is not agreed, the Local Authority will consider pursuing a formal direction in line with the powers outlined in the School Admissions Code.

All schools are required to comply with the agreed Protocols. Where a Panel is unable to make an offer of a school place, Panel members must discuss the school's needs/context and reasons for refusal based on prejudice, during Fair Access Panel meetings to highlight any circumstances they would like to be taken into consideration in the rare instances when the Local Authority is required to instruct. The Local Authority can only make an instruction/direction decision based on the information available at the time the decision making process takes place.

16.0 Local Authority Powers of Direction

In the rare instances when a formal direction to admit is required and the pupil is out of education during this process, it is the AIP’s responsibility to make arrangements for suitable education to be provided. If the direction is upheld the cost for this provision will be recharged to the school.

Where a pupil living in Leeds has been refused entry to, or been permanently excluded from every suitable school within a reasonable distance, the Local Authority will issue a Local Authority
direction to maintained schools or request Secretary of State direction for an Academy. The full processes are outlined in the School Admissions Code. Maintained schools have the right to appeal against the direction to the Office of the School Adjudicator. Academies must follow the process as outlined by the Secretary of State.

The Local Authority will only direct (or request direction) at a school which is a reasonable distance from the pupil's home, and from which the child is not permanently excluded.

17.0 Privacy notice to parents
Please click here to view the School Admissions privacy notice from Leeds City Council.