**City of Bradford Metropolitan District Council Children’s Services**

**Secondary Fair Access Protocol for Children and Young People**

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11. **Headteacher Commitment Statement**

As Headteachers serving in the district of Bradford we commit to implementing this protocol which we have had the opportunity to contribute to and which we believe will ensure access for children to a high quality educational provision whilst also ensuring fairness and equity amongst all schools and academies.

We acknowledge we are working in a challenging context made even more challenging in recent times due to local, national and global factors. These include the Covid-19 pandemic, the financial landscape, Bradford as a destination for refugees and asylum seekers and the quantity of affordable housing (relative to neighbouring authorities).

This protocol was agreed by the majority of schools and academies during the summer term 2023 and all schools and academies must therefore participate in its implementation.

1. **Introduction**

The purpose of Bradford’s Secondary Fair Access Protocol, developed in partnership with local schools, is 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.[[1]](#footnote-1)

This document refers to City of Bradford Metropolitan District Council Children’s Services procedures in relation to secondary school children, a separate document is available which outlines the procedures in relation to primary school children.

Where school is referred to in this document this relates to any LA maintained school or Academy.

This document should be read in conjunction with the Department for Education, School Admissions Code, ‘Statutory guidance for admission authorities, governing bodies, local authorities, schools’ adjudicator and admission appeals panels’- May 2021.

1. **Principles**

Every LA must have a Fair Access Protocol, agreed with the majority of its schools, in which all schools (including academies) must participate since it is binding on all schools.[[2]](#footnote-2)

There is a shared commitment to ensuring that all children access school places as soon as it is possible to do so and schools must comply with the protocol.

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.

The Fair Access Protocol may only be used to place the identified 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 procedures. 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.[[3]](#footnote-3)

Eligibility for the Secondary 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. They must not refuse to admit such children on the basis that they may be eligible to be placed via the Secondary 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 Secondary Fair Access Protocol[[4]](#footnote-4)

There is no duty to comply with parental preference when allocating places through the Fair Access Protocol, but parents’ and child’s views will be taken into account.

When seeking to allocate a place to a child under the protocol all schools will be treated in a fair, equitable and consistent manner.

An application to direct a school to admit will only be requested as a last resort and where a school refuses to admit a child allocated under the protocol without demonstrating good reasons for the refusal.

**4.** **The Fair Access Protocol – Secondary Schools in Bradford**

**4.1 Fair access categories**

The School Admissions Code identifies that 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 procedures:

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 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 arrangements (As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order);

 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 - see section regarding Challenging Behaviour

k) children for whom a place has not been sought due to exceptional circumstances;[[5]](#footnote-5)

 l) children who have been out of education for four or more weeks or have been electively home educated, where it can be demonstrated that there are no places available at any school within a reasonable distance [[6]](#footnote-6)of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted;

m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

**4.2 Challenging Behaviour**

The School Admissions Code 2021 paragraph 3.10 states where an admission authority receives an in-year application for a year group that is not the normal point of entry 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 the child to the Fair Access Protocol

 For the purposes of this Code, 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.

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. Admission authorities should also consider the effect of the decision of the Upper Tribunal in C & C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party) (SEN) [2018] UKUT 269 (AAC) about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.

**4.3 Behaviour and attendance collaboratives and their interaction with the FAP Panels**

The BACs operate collaboratively and outside the FAP protocol in order to provide support for schools in each area and to prevent exclusions by negotiating directions off-site and managed moves. Where possible, information should continue to be shared with the Fair Access Panel to enable them to have a holistic overview.

**5.** **The Allocation Procedure for Secondary aged children**

Bradford is a large and complex district. In order to facilitate efficient admissions for our most vulnerable children, the protocol will be operated across three districts – Three Valleys, Central and South. This will ensure that a small number of leaders meet routinely to very quickly place children who are eligible under the FAP criteria. The frequency of panel meetings will be fortnightly. The timetable will be organised by the Admissions Team and agreed with the Chairs. The timetable will be sent out in advance of the new academic year. If children are placed before meetings are held, as offers are made before the meeting, these will be recorded as usual and only those still requiring placement will be discussed. If all children have been placed as a result of schools accepting children when the lists are published, or there are no cases for discussion then the panel meeting will be cancelled. Where there is panel overlap in preferences, cases will be listed on multiple panels for discussion. If more than one offer is made, then the LA will consider parental preference and other factors to decide if only one allocation should be presented as the allocated school. The Local Authority will decide which cases are referred to the Panel for consideration, ensuring eligibility criteria have been met.

Headteachers and/or their representatives will convene a meeting at the start of each academic year to agree the Chair/Vice Chair and to discuss the context for the year. This should also be an opportunity for LA officers to update the Panel on relevant matters pertaining to admissions. If there are any schools that also wish to discuss their circumstances and request a short ‘moratorium’ in the admission of FAP cases, then this can be done at this meeting or at any meeting during the year. It will be for the Panel to agree or refuse the requests by majority vote. Parents will still be given the right to appeal to the Independent Appeal Panel and this will not impact on the operation of ‘In Year’ admissions which is a legal process that cannot be ‘suspended’ for any reason, in accordance with the Schools Admissions Code.

**5.1 Making a decision**

Decisions regarding allocations will be made at the Fair Access Panel meetings for which the terms of reference should be agreed at the start of each academic year. (Section 6)

All children should be placed at these meetings regardless of whether a school representative is present or not. For this reason, it is important that all schools make available a representative to attend the meetings in person who has delegated authority to make decisions.

Each panel will be provided with a data dashboard which has been agreed and will be circulated by the local authority. The purpose of this data dashboard is to ensure that the FAP panel members have accurate information in order to make the most appropriate decisions about the allocation of children. Data will be pulled from the CAPITA ONE system. This is updated by LA Teams but data is generally from schools, so the dashboard represents data that schools have inputted. Given that some schools and academies also manage their own admissions and/or do not share electronic uploads with the LA, these schools will need to ensure that they regularly update the individual Teams within the LA responsible for the different areas. E.g., SEN Team, Virtual School, Admissions. With regards to numbers on roll, schools are responsible for informing the Admissions Team once a child has been out on roll. The Team requires the child’s name, DOB and start date as well as updated numbers. If the child’s details are not forthcoming the Team cannot update the numbers on roll.

The dashboard will be populated with the following information for each school:

* PAN for year 7 and agreed admissions number for all subsequent years.[[7]](#footnote-7) *Updated at the start of each academic year.*
* Any specific arrangements entered into by the school with the local authority in terms of “one off” increase in admissions. For example, if a school has taken an additional form of entry to alleviate a need for places (bulge class) or chosen to admit above PAN.
* Number of in-year admissions that the LA have been advised are on roll with a start date.. *Updated every meeting.*
* FAP allocation by year group. *Updated every two weeks*
* FAP on roll for that year for each year group. *Updated every two weeks.*
* Most recent Ofsted rating.
* Number of children with an ECHP by year group.
* Number of children CLA by year group.
* Pupil premium numbers.

The decision making process should aim to:

* Admit children to a school as soon as possible and within 20 days as a maximum
* Be open, fair and transparent taking into account the data dashboard and any other relevant factors
* Adhere to the commitments agreed to by all headteachers
* Make decisions that are in the best interests of the child, equitable amongst schools and transparent.

The decision making process should consider but are not bound by the following:

* The views of the parent
* Distance to school (3 miles 8yo and over, 2 miles under 8yo)[[8]](#footnote-8)
* Any siblings already at the school or being allocated alongside
* Any child returning from Elective Home Education, who is eligible for placement under this protocol, should be offered a place at the school which they previously attended. However, if the child now lives outside of the previous school’s catchment area (3 miles) and there is a more appropriate or accessible school in any Panel area, then it will be more appropriate to offer an alternative school. This only applies to children continuing in the same phase of education.
* Any child eligible for placement under the Fair Access Protocol returning to an area where they previously lived, should normally be offered a place at the school which they previously attended however the Panel should consider all relevant factors including vulnerability, accessibility and transport. This only applies to children continuing in the same phase of education.
* Agreeing to admit a student at a school only on the agreement that a managed move must be agreed at BACS is not appropriate. Schools can however request a managed move from BACS if the parent/young person agrees.

The discussions on allocations between Panel members should be based on relevant information provided by the Local Authority, which will be circulated 3-4 working days before the panel meeting.

It is hoped that schools can work together to ensure all our children are suitably placed. Therefore, the following reasons will not be accepted as valid reasons to refuse admission to a child through the FAP:

* Not being able to meet SEND need of a child without an EHCP
* Not being able to meet EAL need of a child
* Staffing reasons such as SENDCO, EAL, pastoral
* Challenging behaviour in a certain year group – circumstance in a year group
* Curriculum or options with the exception of children in Year 11
* Number of managed moves the school are involved in
* Poor attendance
* Distance if it is within the guidelines published in the DFE guidance or parental choice
* Simply because the child is in Year 11. Curriculum requirements should be thoroughly explored for children at KS4 when considering placements.

It is recognised that there may be exceptional circumstances when a Fair Access panel may consider information provided by a school to justify exemption from a fair access allocation. Schools will be offered the opportunity to provide information to the panel where they feel that there are exceptional circumstances that would mean the admission of a Fair Access child to the year group in question would be of significant detriment to that year group, to the school as a whole or to the child. In this context, exceptional is defined as threat to the person or threat to others by the person or placement would constitute a serious safeguarding risk.

Fair access panels will meet fortnightly during term time to allocate cases and discuss any issues pertinent to Fair Access. The Chairs and Vice Chairs of each Fair Access Panel will also meet fortnightly, with the Local Authority to do the following:

* Consider any complex cases that were unable to be resolved at FAP panel meetings, ideally providing information before to ensure all cases are resolved at panel
* To ensure students who are ready for mainstream education following a permanent exclusion are a priority for allocation and any additional support required to ensure this can happen be communicated to the Exclusions Team to ensure a timely return to mainstream.
* Review the data dashboard and alert officers at the LA of any issues regarding emerging patterns or trends which may require exploration.
* Compare and review the implementation of the FAP process to ensure consistency of the application of the protocol across the City
* Support each other and share practice in the role of Chair and Vice chair
1. **Terms of Reference of the Fair Access Panel meetings**

Fair Access Panel meetings by definition are serious and formal meetings where some of our most vulnerable children are discussed. As such, the meetings should reflect the important nature of the task being performed. In planning the school calendar, priority should be given to ensure the appropriate representatives are given the required time to enable them to fulfil this role.

Panels will agree whether to meet face-to-face or virtually by MS Teams, at the end of each academic year, for the forthcoming year. Panels are encouraged to meet face to face periodically. Timings of face-to-face meetings must take into consideration the IT requirements of the meeting and allowing travel time for all attendees. Panels will meet every two weeks, timetabled at the end of the previous academic year and circulated by the LA, to ensure that children are admitted to school within mandatory timeframes. Panels will be cancelled in the event there are no children to place.

**6.1 Membership of the Panel**

Each school or academy identified in the panel will send a representative with the authority to make decisions on admitting students to their organisation.

If a school or academy fails to send a representative, children may be placed at that school or academy in their absence, decided by the Panel.

The local authority will attend all meetings, the number of officers and from which teams will be dependent on the requirement of that meeting. It may also be appropriate for professionals working with children to attend in order to provide more detailed information to assist a successful allocation.

**6.2 Role of the chair**

A chair and vice chair will be elected at the start of each academic year at the first meeting. Whilst the chair is elected from within the group, it is expected that the role is impartial and as such, decisions made should be arrived at through consensus. In the event consensus cannot be reached the Chair will refer the matter to the Chairs’ meeting for a decision to be made by the Chair and/or Vice Chair (if in attendance) and the Local Authority. The Local Authority will compile the Chairs’ List after all Panel meetings have been held.

The Chair is responsible for ensuring the meeting adheres to the protocol, as agreed in this document and the School Admissions Code 2021, supported by the Local Authority. In chairing the panel meeting, the Chair will ensure that discussion about appropriate placement of children is professional and courteous and that those present are able to participate fully.

The chair will ensure the notes of each meeting and decisions made are accurately recorded (by checking the notes before circulation)

**6.3 Notes of Panel meetings**

The local authority representatives attending the meeting do so to ensure that the Protocol is adhered to, and that all decision making is in compliance with the School Admissions Code and any other relevant statutory guidance or legislation thus enabling sound, fair and reasonable decisions to be made. Notes of each meeting will be circulated by the local authority to all schools in the Fair Access Panel area and to the relevant Chair and Vice Chair, in addition to local authority officers as required (taking into consideration Data Protection).

**6.4 Attendance**

Meetings will be quorate when the Chair or Vice Chair (in the absence of the Chair), Local authority officer and one additional Headteacher (or Headteacher representative) are present. A record of attendance and any apologies made will be recorded. Non-attendance of two consecutive meetings, by a Panel member or their representative) will result in the following actions to maintain high attendance and participation:

* An LA officer will contact the school Headteacher or representative to ascertain any logistical/operational reasons for non-attendance
* The Chair will discuss any issues regarding attendance with the Headteacher if they are not resolved.
* Escalation to a senior local authority officer if there is continued non-attendance by the school.
1. **Notification of Decision**

The school allocation information will be communicated to schools through a secure method. This communication should contain all the relevant information needed by the school to facilitate a speedy admission

In all cases the decision made by the Fair Access Panel will be relayed in writing to the parent/carer of the child and the school/academy will contact the family to facilitate a speedy admission, no later than ten school days after the Panel meetings, unless agreed otherwise with the local authority.

It is then the responsibility of the educational provider to liaise with the parent/carer to ensure a prompt start date, within ten school days of the Panel meeting.

If the education provider is unable to contact the parent/carer, they should communicate this to the admissions team with evidence of phone calls made, three home visits at different times of day and e-mails sent.

If it is necessary to hold a multi-agency meeting before a decision can be made, the school/academy must do so within five school days of the Panel meeting.

If, under exceptional circumstances, a school wishes to refuse to place a child allocated under the protocol, the school must respond to the Admissions Team within seven calendar days indicating, in writing, its reasons for doing so. The Admissions Team will seek to resolve the issue.

If the issue is not resolved the case will be discussed at the next Chairs’ meeting. If it is felt by the Chairs’ Panel that the school should admit the student, then the school will be advised, and an instruction will be issued. If the school continue to refuse to admit the student, the Local Authority will issue an ‘intention to seek direction from the Secretary of State[[9]](#footnote-9)’ and unless any new information is forthcoming concerning the refusal to admit the student, then a direction will be sought from the Secretary of State

If the Chairs’ Panel decide, after consideration of the school’s representation, that they accept the school’s refusal to admit then the Chairs’ Panel will determine which school will be allocated as an alternative.

The allocation decision made by the Chairs’ Panel will be binding on all parties. Refusal by a school to take on roll an allocated child will result in the Local Authority requesting the Secretary of State to direct the school to admit the child. The timeframe for this is 10 school days following the notification of the allocation resulting from the Chairs’ Panel consideration of reasons for refusal.

1. **Monitoring and review**

At the end of each academic year, the Panel should review how the Protocol has been implemented. The protocol should be reviewed every two years and agreed by the majority of schools. The Panel should raise any issues regarding the Protocol throughout the year, as they arise and where possible amendments will be made and agreed.

Flow Chart for FAP Admissions Process

Admissions Team to determine whether child meets at least one of the Fair Access Categories. Admissions Team to collate all information provided with application required to determine this.

In-Year Transfer Request completed by family indicating parental preference. Admissions Team process in-year transfer request. Is the case considered Fair Access or has it been referred to Fair Access by school?

Yes – Parent will be informed of where the case is in the process if the 15 school days is passed.

No

Fair Access Panel allocate a school taking into consideration, as appropriate, parental preference, home address, data dashboard and running total of allocations of each school

Normal in-year admissions process followed by Admissions Team

School notified of allocations via secure method. Parent notified by letter.

School refuses to admit School must notify the LA giving detailed reasons for the refusal within the 5 school days.

School to respond to request within 5 school days

School to contact family without delay. School to agree start date and inform Admissions Team.

The LA will consider the grounds for refusal and refer to the Chairs’ meeting for a discussion.

If reasons given for refusal are not accepted, then the Chairs will decide if an instruction is required. If the Chairs decide to accept the reasons for refusal, they will then decide which school should admit the student instead of the original school.

Child is on roll. School notify Admissions.

Parent refuses to accept allocation, Admissions Team may refer to CME as a school refuser with possible SAO. Parent has right of appeal to all preferred schools

If a school refuses an instruction, the Chairs meeting and the LA will consider if a request for a direction should be sought from the Secretary of State.

If a school has not agreed a start date for the child within 15 calendar days of the notification, the school will need to advise the LA in writing as to the reasons why. If the LA does not accept the reasons an instruction will be issued followed by a request to the Secretary of State for direction, if required.

1. Department for Education, School Admissions Code, ‘Statutory guidance for admission authorities, governing bodies, local authorities, schools adjudicators and admission appeals panels’ (May 2021) s. 3.14, p. 32 [↑](#footnote-ref-1)
2. Department for Education, Fair Access Protocols: Principles and Process, p. 3 [↑](#footnote-ref-2)
3. Reasonable Distance- Department for Education, Home to school travel and transport guidance Statutory guidance for local authorities, (July 2014 s.34, p. 14) ‘As a general guide, transport arrangements should not require a child to make several changes on public transport resulting in an unreasonably long journey time. Best practice suggests that the maximum each way length of journey for a child of primary school age to be 45 minutes and for secondary school age 75 minutes, but these should be regarded as the maximum. For children with SEN and/or disabilities, journeys may be more complex and a shorter journey time, although desirable, may not always be possible. [↑](#footnote-ref-3)
4. Department for Education, School Admissions Code, ‘Statutory guidance for admission authorities, governing bodies, local authorities, schools adjudicators and admission appeals panels’ (May 2021) s. 3.18, p. 34 [↑](#footnote-ref-4)
5. 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. Footnote 83, School Admissions Code 2021, pg. 34. [↑](#footnote-ref-5)
6. Reasonable Distance- Department for Education, Home to school travel and transport guidance Statutory guidance for local authorities, (July 2014 s.34, p. 14) ‘As a general guide, transport arrangements should not require a child to make several changes on public transport resulting in an unreasonably long journey time. Best practice suggests that the maximum each way length of journey for a child of primary school age to be 45 minutes and for secondary school age 75 minutes, but these should be regarded as the maximum. For children with SEN and/or disabilities, journeys may be more complex and a shorter journey time, although desirable, may not always be possible.’ [↑](#footnote-ref-6)
7. The term PAN can only legally be used for admissions from Y6 into Y7. The agreed admissions number in this document refers to the “PAN” for year groups other than Y7. [↑](#footnote-ref-7)
8. Reasonable Distance- Department for Education, Home to school travel and transport guidance Statutory guidance for local authorities, (July 2014 s.34, p. 14) ‘As a general guide, transport arrangements should not require a child to make several changes on public transport resulting in an unreasonably long journey time. Best practice suggests that the maximum each way length of journey for a child of primary school age to be 45 minutes and for secondary school age 75 minutes, but these should be regarded as the maximum. For children with SEN and/or disabilities, journeys may be more complex and a shorter journey time, although desirable, may not always be possible.’ [↑](#footnote-ref-8)
9. 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 Schools Adjudicator in reaching a decision. School Admissions code 2021, 3.29 P36 [↑](#footnote-ref-9)