

# In-Year Fair Access Protocol for Schools and Academies

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**BARNSELY**  
Metropolitan Borough Council

The School Admissions Code (updated September 2021) requires the Local Authority to have a Fair Access Protocol (FAP). The purpose of the FAP is to ensure that unplaced and vulnerable children, and those who require a school place in-year, are allocated a school as quickly as possible. In agreeing the 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 operation of the FAP 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 (School Admissions Code 2021, 3.14)

All admission authorities **must** participate in the Fair Access Protocol. There is no duty for Local Authorities to comply with parental preference when allocating places through the Fair Access Protocol (School Admissions Code 2021, 3.19)

Any reference to a school is also a reference to an academy.

## Introduction

In-Year Fair Access Protocols exist to ensure that outside the normal admissions round - unplaced children, especially the most vulnerable, are found and offered a school place quickly, so that the amount of time any child is out of school is kept to a minimum. In Barnsley, it has been agreed to include those children who are currently at risk of being placed in this position, and to ensure that all schools in an area admit their fair share of children with challenging behaviour. The aim of this protocol is to encourage schools to work together in partnership to improve behaviour, tackle persistent absence and provide significant benefits to the child, the family, and the school.

It is essential to the success of the Protocol that all headteachers and governing bodies agree to its aims, principles and procedures and give it their fullest support.

This Protocol is consistent with and complementary to, the DfE Guidance on identifying and maintaining contact with children missing, or at risk of going missing from education. The Protocol contributes to the prevention of children falling out of the education system because they:

- fail to start the appropriate provision and hence never enter the system; or
- cease to attend, due to exclusion or withdrawal; or
- fail to complete a transition between providers (e.g. being unable to find a suitable school place after moving to a new LA).

The Protocol is further underpinned by the Children and Families Act 2014 and its requirements concerning the wellbeing of children and young people. Hard-to-Place Children are often already underachieving or at risk, and failure to place them in a reasonable timescale make them more vulnerable still. A successful Protocol addresses the risk and underlines the collective response of schools in the Borough to the situation of these young children, their families, and carers.

# 1. Aims of the Protocol

This Protocol is designed to:

- acknowledge the real need of vulnerable children in the Borough, who are not on the roll of any school or are currently at risk of being placed in this position, to be dealt with quickly and sympathetically.
- reduce the time that these hard-to-place children spend out of education.
- 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.
- ensure that all schools accept joint responsibility for the education of hard-to-place children.
- ensure that all schools admit hard-to-place pupils fairly and equally over the academic year taking into account admission trends over time.
- be fair and transparent and to have the confidence of all schools.

# 2. Admission to School

Children admitted into the Reception Year and those pupils transferring from Year 6 in a primary school to Year 7 in a secondary school do so during the normal admissions round. Where the number of applications is below the admission number all the children will be offered a place at the school. However, where more parents have expressed a preference for a particular school than it has places, the Authority must apply oversubscription criteria. Eligibility for places at an oversubscribed school is determined by the following:

- first, children in public care and children previously in public care.
- second, to children with brothers and / or sisters attending the school on the proposed date of admission.
- third, to children living nearest the school, the distance to be measured by a straight line between the child's ordinary place of residence and the main entrance to the school building.

All governing bodies are required by Section 324 of the Education Act 1996 to admit to the school a child with an EHCP where the school has been named.

Throughout the school year applications are made by parents to transfer their child from one school to another which means that their application is being dealt with outside of the normal admission round.

Such admissions to school are referred to as In-Year Transfers and it is in this area of admission to school that problems can arise with particular pupils. The aim of the Protocol is to deal with pupil applications outside of the normal admission round where they are considered to have challenging behaviour or have been permanently excluded from other schools.

## Infant Class Sizes

The infant class size legislation makes allowance for the entry of an additional child in extremely limited circumstances where not to admit the child would be prejudicial to his or her interests. Such pupils are referred to as “excepted pupils.”

Where a child is referred to the FAP it shall be determined whether or not the child is an “excepted pupil” as set out in paragraph 2.16 of the School Admissions Code 2021.

## 3. The Legislation

### Parental Preference

**There is no duty for local authorities to comply with parental preference when allocating places through the Fair Access Protocol, but it is expected the wishes of the parents are taken into account.**

### Waiting Lists

There is a potential conflict between admission arrangements which require the pupil at the top of the waiting list to be offered a place if one becomes available.

The waiting lists for Barnsley Schools operate as follows:

- primary schools – a waiting list is only maintained for the Reception Year up the end of the Autumn Term in the admission year.
- secondary schools – a waiting list is only maintained for Year 7 up to the end of the Autumn Term in the admission year.
- waiting lists are not maintained for any year group other than the Relevant Year Group, which is the year to which children are normally admitted. In Barnsley this is reception and Year 7.

The DfE recommend that where the Protocol identifies a school, and a waiting list exists the protocol must take precedence over the waiting list.

## 4. Hard-to-Place Children

The Local Authority believes that all children should receive a good education to help them fulfil their potential. However, for some children this can be harder than for others. Sometimes children can find themselves without a school place during the course of the school year because their personal circumstances are such that they had to move home; or they are looked after children; or they have been excluded from a school. The Authority considers it is important that, wherever possible and in the best interests of the child, a suitable school place should be found quickly.

There is often a balance to be struck between finding a place quickly, perhaps in an undersubscribed school or one facing challenging circumstances and finding a school place that is appropriate for the child. It is also important that no school should be asked to take a disproportionate number of pupils who have been excluded from other schools, or who have challenging behaviour.

## 5. Definition of Hard-to-Place Children

The Fair Access Protocol 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 admissions procedures.

- children either subject to a Child in Need Plan or a Child Protection Plan or having had a Plan within 12 months of the point of being referred to the Panel.
- children living in a refuge or in other Relevant Accommodation at the point of being referred to the panel.
- children from the criminal justice system.
- 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.
- children with special educational needs (but without an Education, Health, and Care Plan), disabilities or medical conditions.
- children who are carers'
- children who are homeless.
- children in formal kinship arrangements.
- children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers.
- children who have been refused a school place on the grounds of their challenging behaviour and referred to the Panel in accordance with paragraph 3.10 of the Admissions Code.

- children for whom a place has not been sought due to exceptional circumstances.
- 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.
- previously looked after children for whom the local authority has been unable to promptly secure a school place.

## 6. Key Principles

The Local Authority/School will consider the circumstances of the individual pupil, in terms of what is best for them.

Where an individual pupil meets one or more of the above criteria, referral should be made to the Fair Access Panel for consideration of placement into appropriate provision within the Borough. The panel will consider such applications and agree appropriate placements. The Panel's decision will be binding upon all parties. However, nothing will prevent the parent making an appeal for any school they have expressed a preference for and not received an offer of a place.

In order for the Protocol to be successful for the pupils and schools in Barnsley:

- all schools, including Academies and own admission authority schools, are required by the Admissions Code to take part in the Protocol.
- The Protocol will allow children to be admitted to a school above the published admission number to schools that are already full. For that reason, appeal panels should not view the fact that Protocol has obliged a school to admit over its admission number as an indication that it can do so in the normal admissions round without causing prejudice to the provision of education or efficient use of resources.
- schools will seek to respond immediately to requests for admission so that the admission of the child is not unduly delayed.
- where a year group is oversubscribed and the FAP determine that a child be admitted to the year group, the ground on which that decision is based is: that the circumstances of the child's case outweigh the prejudice that would otherwise be caused by a further admission into the year group.
- Following a FAP placement, after a pupil has been on roll of a school, any further issues with that pupil would be brought back to the Panel and would be considered as a new referral.
- Elective Home Education – where a pupil is removed from a school roll to be electively home educated and subsequently applies to come back into mainstream education, a place will always be offered in their previous school unless there are significant extenuating circumstances against this.

## 7. Fair Access Panel

In order to implement the protocol, the Local Authority will establish an administrative body known as the Fair Access Panel (FAP).

### Terms of Reference

1. To consider, outside of the normal admission round, the admission to school of any child of statutory school age where they are deemed to be hard to place.
2. To produce a bimonthly report on the applications made to the FAP and the decisions made.

### Constitution

- 1 The core membership of the FAP shall be:
  - I. Representative of the Office of Director of Children's Services.
  - II. Representative School Admissions
  - III. Representative Education Welfare
  - IV. Executive Principal Alternative Academy
  - V. Head teachers/Executive Head teachers/CEO's as appropriate (in exceptional circumstances a senior representative from the school)
- 2 Decisions of the Panel will be by consensus. If there is no consensus the decision will be referred to the Executive Director for Children's Services.
- 3 The Clerk to the FAP will be an officer from the Local Authority.
- 4 The FAP will be quorate when three core membership officers including a head teacher are present.
- 5 The FAP will normally meet twice per calendar month.
- 6 Meetings of the FAP will not be open to the parents/carers. However, their views are reflected on the referral form.
- 7 Any decision made by the FAP will be binding on the school to which the decision refers.
- 8 A record of the proceedings will be kept.

## 8. Fair Access Panel Procedure

An application to the FAP can be made by any head teacher at a school in the Borough or through the Admissions Service.

Where it has been agreed that a child will be considered under the Protocol a school place **must** be allocated within 20 school days.

All applications will be sent to the FAP Clerk.

- The Clerk will ensure that the application is supported by the appropriate documentation and all necessary signatures have been obtained. Cases submitted to FAP must be done so using the electronic proforma.
- At a pre-meeting, officers representing the Local Authority will determine, in the circumstances of each case, whether the application is considered by the FAP.
- The panel will use the FAP tracker and take parental preference and location into account.
- Where an application is to be considered by the FAP, the clerk will circulate the documentation prior to the meeting.
- A record of decisions made will be kept by the clerk.
- The referring school is responsible for contacting the parent by telephone within one working day informing them of the decision of the FAP.
- It is the responsibility of the receiving school to parents and admit the pupil within 5 school days. If this timescale is not met it is the responsibility of the receiving school to liaise with the referring school and to email [exclusions@barnsley.gov.uk](mailto:exclusions@barnsley.gov.uk) to discuss the problems they have engaging with the family. The child should be placed on the school's roll by the 5<sup>th</sup> day regardless of whether the admission meeting has taken place.
- If the EWS is involved with the case, they need to be informed within 5 working days to try and resolve the situation. If there is no involvement, then a referral needs to be made to the service.
- If after the EWS has made contact no progress has been made, then enforcement procedures will be considered.

### Guidance

In coming to a decision, account will be taken of the number of challenging and vulnerable pupils already on roll at the school and that a school should not be expected to take a disproportionate number of hard-to-place pupils during the school year.

However, in exceptional circumstances and by mutual agreement with the school, additional hard-to-place pupils can be admitted.



## Tracker

The pupil tracker will be used to inform decision making by the panel, the aim being to ensure fairness of pupil movement in and out of the schools/academies via FAP.

Information from the tracker may be used to inform the panel to direct pupils to schools outside of parental preference.

The tracker will take into account pupil movement over a two-year period.

## **9. Sixth Day Provision**

Schools/Academies will notify the Local Authority, as soon as reasonably practicable, but in all circumstances within one working day when a permanent exclusion has occurred. The local authority shall ensure suitable provision for the pupil is available by the sixth day following exclusion.

## **10. Directions**

The Local Authority has the power to direct the governing body of a school, where it is the admission authority for that school, to admit a child where they have been refused admission to, or permanently excluded from, every school which is both a reasonable distance from their home and provides suitable education.

This power to direct is for admission to a foundation or voluntary aided school.

If an academy refuses to admit a pupil assigned under this protocol after the panel has fully considered the case, the local authority will inform the academy of their intention to request a direction to admit the pupil from the Secretary of State. When reviewing an academy direction case, the Education and Skills Funding Agency will act on behalf of the Secretary of State.

Community and voluntary controlled schools must implement any decision made by the Local Authority relating to the admission of a child, except where this relates to a child who has been permanently excluded twice.

## **11. Provision of Transport**

In accordance with the Council's Home to School Transport Policy any decision of the Fair Access Panel which meets the criteria for free transport will be provided.

## **12. Role of the Parent**

Any application for a managed move must be supported by the parent. Parents cannot be forced to agree to a managed move.

## 13. Role of the Governing Body

Governing bodies of community and voluntary controlled schools and academies have no role to play in individual admissions to the school via FAP.