Nottinghamshire County Council

FAIR ACCESS PROTOCOL (PROPOSED) November 2018

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Section 1 - introduction

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 the minimum. This is why every local authority is required to have in place a fair access protocol, developed in partnership with schools (DfE Guidance, November 2012 – Fair Access Protocols: Principles and Process).

Fair access protocols encourage local authorities, schools and academies to work together in partnership to ensure that the best interests of vulnerable children are considered whilst ensuring 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 School Admissions Code 2014 gives local authorities and schools, including academies, the freedom to develop and agree protocols to best serve the needs of children in their area. It is for participating schools to ensure that the local protocol works for them and is reviewed as required with the local authority.

The statutory responsibility for local authorities to coordinate admissions outside the normal round (in-year admissions) was removed for admissions from September 2013. Parents now face a wide range of different practices and procedures in respect of applying for a school place for their child. As schools increasingly take responsibility for their own admissions, the risk that children will 'fall between the cracks' and be unable to secure a place quickly at a local school increases. In addition, the process can be complex for parents to understand because the way in-year admissions are managed varies from one local authority to another.

The operation of the fair access protocol is outside the arrangements of coordination and is triggered when a parent of an eligible child has not secured a school place under in-year admissions procedures or a governing body has made a referral. Some children in vulnerable groups may find it difficult to secure a school place; it is expected that all parties will act with a sense of urgency to identify a school place for any child who has had difficulty securing a one or who falls under the fair access protocol (DfE Guidance, November 2012 – Fair Access Protocols: Principles and Process).

Section 2 – overall procedures and context

2.1 – Legislative background

The School Admissions Code 2014 (3.11), states that all admission authorities must participate in the fair access protocol in order to ensure that unplaced children are allocated a school place quickly.

The School Admissions Code 2014 applies to admissions to all maintained schools in England and should be read alongside the School Admission Appeals Code 2012 and other guidance and law that affect admissions and admission appeals in England. Academies (including free schools), university technical colleges and studio schools are required by their funding agreements to comply with the School Admissions Code 2014 and the law relating to admissions, though the Secretary of State has the power to vary this requirement where there is demonstrable need.

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2.2 – The Nottinghamshire context

Nottinghamshire County Council has established an in-year coordinated scheme for Nottinghamshire community and voluntary controlled schools with an option for own admission authority schools to participate. If a place cannot be offered through the normal admissions process, the application will be considered in line with the County Council's Fair Access Protocol. For those schools not participating in the in-year scheme, the fair access protocol is key in identifying those vulnerable groups to ensure that vulnerable children without school places are not overlooked.

Nottinghamshire County Council has well-established collaborative fair access procedures at secondary and primary level, supported by staff from the Fair Access Team and Primary Social Emotional Development (PSED) team. Although all partnerships are required to operate within the same legislative framework it is for individual panels to agree how the fair access protocol can operate to best meet the needs of children and schools within their area. All Nottinghamshire localities are required to have an operational fair access panel. Regardless of their operational arrangements all partnerships seek to minimise the number of days that a child or young person remains without a school place.

Admissions correspondence and agreed admissions processes are designed to enhance continuity between the in-year scheme and the fair access protocol. This is to ensure that when a child has not secured a school place through the normal admissions process, the fair access protocol is triggered.

2.3 – Locality-based partnerships

The fair access process at secondary level is facilitated by nine locality-based school partnerships which meet regularly to make recommendations for the placement of children living in their area, including those who have been permanently excluded. Occasionally, the nearest accessible school place for a particular child may fall within a neighbouring locality. In these circumstances, cross-locality collaboration will be necessary to establish the most appropriate placement for the child.

The nine locality-based school partnerships have developed different models of operation to meet the needs in their local area. However, the fair access process requires all the locality partnerships to make appropriate provision for young people who require education either in a mainstream school or in alternative provision. Local procedures must comply with the requirements of the agreed Nottinghamshire fair access protocol and unplaced pupils who meet the criteria must be offered a place.

Whilst the need for primary places to be allocated through the fair access process is rare it is still a requirement for each primary locality to have an agreed process in place. Where appropriate, cases are currently raised through Primary School Behaviour and Attendance Partnership Meetings. Advice and guidance is available to school leaders from the Primary Social Emotional Development Team and the Fair Access team. If primary locality panels are unable to meet or identify school placements then the case will be referred to the Local Authority's Children Out of School Panel (COOS) for a decision.

2.4 – Scope of the fair access protocol

The majority of applications for school places will be dealt with through normal admission procedures. However some children in vulnerable groups may find it difficult to secure a school place.

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The School Admissions Code 2014 (3.15) states that a fair access protocol, as a minimum, must include:

- children from the criminal justice system or pupil referral units who need to be reintegrated into mainstream school
- children who have been out of education for two months or more
- children of Gypsies, Roma, Travellers, refugees and asylum seekers
- children who are homeless
- children with unsupportive family backgrounds for whom a place has not been sought
- children who are carers
- children with special educational needs, disabilities, medical conditions (but without an Education, Health and Care Plan).

In addition, Nottinghamshire's fair access protocol also supports:

- children with exceptional social, emotional or behavioural needs, particularly those who pose a significant safeguarding risk (without an Education, Health and Care Plan)
- children who have been without a school place for more than 20 school days
- children who are subject to a child protection plan or categorised as children in need
- children who are fleeing domestic violence.
- children where it has not been possible to allocate a school that is at a reasonable distance due to there being no place available within a reasonable distance
- children where elective home education (EHE) is deemed unsuitable by the LA
- exceptional reasons referred by the Fair Access team

Looked after children, previously looked after children or children with an Education, Health and Care Plan naming the school, fall outside the fair access protocol and other arrangements are in place to ensure that these children are admitted.

2.5 – Procedures and responsibilities

For applications that are processed through Nottinghamshire's in-year scheme, fair access will automatically be triggered in accordance with timelines laid out in the scheme. Own admission authority schools that are not participating in Nottinghamshire County Council's in-year scheme are required, on receipt of an in-year application, to notify the County Council of the application and its outcome. This enables the local authority to track and safeguard children in the area and make a referral under the fair access protocol as necessary.

It is the responsibility of each school to send a representative to the meeting; this person must be empowered to make decisions on behalf of the school at that meeting.

The fair access protocol should not be used as a means to circumvent the normal in-year admissions process.

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Section 3 - requests by schools for referral to fair access panel

3.1- Legislative context

The School Admissions Code 2014 (3.12) states that where places are available but a governing body does not wish to admit a child with challenging behaviour outside the normal admission round, the case must be referred to the local authority for action under the fair access protocol. This is normally only appropriate where a school can evidence a particularly high proportion of children with challenging behaviour or previously excluded children. The use of this provision must not be used to give time to gather further evidence or unnecessarily delay the admission of children to school. This provision will not apply to a looked after child, a previously looked after child or a child with an Education, Health and Care Plan naming the school in question, as these children **must** be admitted.

There are limited grounds on which an application for admission can be refused. The School Admissions Code 2014 (3.8) states that where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion.

The School Admissions Code 2014 (2.9) states that admission authorities **must not** refuse to admit a child solely because:

- they have applied later than other applicants
- they are not of the faith of the school in the case of a faith school
- they followed a different curriculum at their previous school
- information has not been received from the previous school
- they have missed entrance tests for selective places

3.2- Secondary School Under PAN refusals

Where a Nottinghamshire governing body does not wish to admit a child even though there are places available, the school will need to provide the following to their locality panel, or to the Nottinghamshire County Council Children Out Of School (COOS) panel if they are unable to raise the case at a locality panel meeting:

a) a copy of the governing body decision to refer the case to the local authority for action under the fair access protocol

b) evidence that the child has a history of significantly challenging behaviour corroborated by expert diagnosis, school exclusion history, the youth justice system or other appropriate sources. Guidance regarding appropriate evidence is provided by Nottinghamshire County Council to each locality panel or school.

and

c) that the relevant cohort already contains a particularly high proportion of children with challenging behaviour or previously excluded children than those that currently exist in similar cohorts within the locality partnership. Guidance regarding appropriate evidence is provided by Nottinghamshire County Council to each locality panel or school.

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3.3- Primary School Under PAN refusals

Where a Nottinghamshire governing body does not wish to admit a child even though there are places available, the school will need to provide the following to the Nottinghamshire County Council COOS panel:

a) a copy of the governing body decision to refer the case to the local authority for action under the fair access protocol

b) evidence that the child has a history of significantly challenging behaviour corroborated by expert diagnosis, school exclusion history, the youth justice system or other appropriate sources. Guidance regarding appropriate evidence is provided by Nottinghamshire County Council to schools who indicate an intent to refer.

and

c) that the relevant cohort already contains a particularly high proportion of children with challenging behaviour or previously excluded children than those that currently exist in similar cohorts within the locality partnership.

Section 4 – locality panels

4.1- Consideration of referrals

Locality panels should meet at least monthly to ensure that a school place is identified quickly for unplaced children.

The locality panel will be expected to consider the parental application and the governing body's referral. The panel should identify an appropriate school place for the child. Non-attendance by a school representative at a panel meeting does not preclude a decision to place a child at that school and these decisions are still binding.

The allocation of a place in accordance with the fair access protocol does not override a parent's right to appeal against refusal of a place at any school for which they have applied. Children allocated a place at a school in accordance with the fair access protocol must take precedence over those on a waiting list. If an application is referred despite places being available in the relevant year group, the governing body must present to the locality panel their case for refusal. This should demonstrate how admission of the child would prejudice the provision of efficient education or efficient use of resources.

4.2-Assessing the suitability of a placement

As part of assessing the suitability of a placement for a child, the panel must take account of any relevant information provided by parents/carers, school, LA, other admission authorities or professional agencies. This could include a previous serious breakdown in the relationship between the school and the family, or strong views about the religious ethos of a school.

Locality panels are required to give due consideration to the specific needs of any vulnerable pupils that they are seeking to place. They should aim to identify an educational pathway that offers the child the best opportunity to achieve a positive academic outcome. There is no duty for local authorities or

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admission authorities to comply with parental preference when allocating places through the fair access protocol.

Locality panels are also responsible for ensuring that appropriate educational provision will be sought for children who have a right to educational provision and whose applications are being considered under the fair access protocol but who are not ready for mainstream schooling. In the majority of circumstances, this will involve placing the child onto the roll of their catchment school to enable the co-ordination of an appropriate alternative curriculum package.

Wherever possible, children with a religious affiliation should be matched to a suitable school.

4.3- Recommendations

Locality panels make recommendations for the placement of all children who have been identified as meeting the requirements of the fair access protocol, including those who have been permanently excluded. All schools are expected to admit children who have been allocated to them through this process.

Every effort should be made to identify a school place quickly. If in a particular case there are valid reasons why a school roll cannot be identified at the locality meeting, the protocol requires that locality panels are responsible for establishing the educational provision a child will receive and monitoring its effectiveness.

4.4- Alternative provision

In rare circumstances alternative provision may be recommended. This means that a school will be identified to take responsibility for the learning and wellbeing of the child but the education will take place somewhere other than the main school site.

4.5- Managed move

If the child currently has a school place, the panel may suggest that the parent consider withdrawing the formal application to allow a ‘managed move’ transfer. The child will then access learning at a new school for an agreed period of time to ensure that all parties are certain that a permanent transfer will be in the child’s best interests. The child retains the right to return to their current school during this process.

The process of managed moves falls outside the scope of fair access legislation and will therefore only apply if individual locality panels have specifically agreed to develop secure procedures to facilitate such transfers in their area and the parent agrees to participate in that process.

4.6- Applications for children to return to school from EHE

Where possible for children who have been EHE and a request has been made for them to return to mainstream school, a placement will be sought at the child’s most recently attended school.

4.7. Local authority support and monitoring role

If a locality panel meeting is deferred or cancelled, the cases on that months agenda will be referred to the COOS panel who will make decisions regarding placements.

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Whilst this fair access protocol covers all maintained schools and academies within Nottinghamshire, every effort will be made to contact a neighbouring authority to help secure a school place in that area if that is deemed appropriate.

In particularly complex cases, there may be rare occasions where a child cannot be offered a school place by the locality panel or where the school identified by the panel fails to admit the child. In these exceptional cases, the local authority may direct a school to admit the child or may make a referral to a regulatory body. If this is required, the local authority will follow procedures detailed in the School Admissions Code 2014 (3.16 – 3.22).

Section 5- Additional funding

5.1 Higher level special educational needs (HLN)

Children already in receipt of funding through Education Health and Care Plans (EHCPs), including out of county EHCPs, and those in receipt of Higher Level Special Educational Needs Funding (HLN), will have that funding transferred to the receiving school for an agreed period of time.

The Fair Access team will offer advice and support to schools who choose to make new HLN bids if they are asked to admit children with significant special educational needs, serious mental health needs, those who raise serious safeguarding concerns that require mitigation, or children who need to be placed on a school roll for safeguarding purposes but who are known to currently require an alternative educational provision arrangement.

Funding to support pupils with social emotional and mental health (SEMH) needs is devolved to localities through their School Behaviour and Attendance Partnerships. Schools participating in such partnerships will be able to access this funding. Schools which have not agreed a partnership funding agreement with the Local Authority (LA) will be expected to meet the needs of pupils with SEMH needs from their own resources. In localities where the fair access panel and the school behaviour and attendance partnership operate separately they are strongly advised to have agreed communication procedures.

5.2 Permanently excluded children

A permanently excluded child who is admitted to a new school will have, from the date on roll, the remaining portion of the Age Weighted Pupil Unit (AWPU) formula in that financial year transferred to the new school.

5.3 Transport

Key Stage 4 pupils who are applying for a school place as a consequence of a change of residence, but who live within 8 miles of their original school place, can access transport funding to facilitate the completion of the examination courses that they have already started.

If a locality panel, in accordance with the fair access protocol, identifies a place at a school which is not the nearest school or the catchment school, the Fair Access team will confirm that the place has been appropriately designated. Transport funding may be made available if the distance criterion is met.

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Section 6- Monitoring and review

6.1 Monitoring effectiveness of the fair access protocol

The local authority monitors the placement of children identified through the fair access protocol in a number of ways:

- Admissions of Vulnerable Children Group (AVC) termly
- Support to schools service – weekly meeting
- Report to relevant internal groups including Place, Planning and Admissions Board and the Children Missing Education Board.

In addition, the School Admissions Code 2014 (3.23) requires local authorities to produce an annual report on admissions for all schools in their area. This must be sent to the Office of the Schools Adjudicator (OSA) by 30 June and must cover an assessment of the effectiveness of fair access protocols and coordination in their area, including how many children were admitted to each school.

Nottinghamshire County Council has a duty to monitor the quality of alternative provision and does so through the NCC approved provider process.

6.2 Review

The fair access protocol is reviewed regularly with relevant partners and agreed by the Place, Planning and Admissions Board.

In the event that the majority of schools within Nottinghamshire no longer support the principles and approach of the protocol, all the school heads should initiate a review with the local authority. The existing fair access protocol however remains binding on all schools until the point at which a new one is adopted (DfE Guidance, November 2012 – Fair Access Protocols: Principles and Process).

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