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## Revised Birmingham Fair Access Protocol

### Introduction

This paper sets out the background and statutory requirements with regard to the Fair Access Protocol. It also outlines the changes in the School Admissions Code 2012 and the proposed operation of the Fair Access Protocol (FAP) in this new context, with the prime objective of ensuring that - outside the normal admission processes, which are expected to cater for the vast majority of placements - children who are without a school place, especially the most vulnerable, are offered a place at a suitable school as quickly as possible.

### Background

Birmingham has had its current Fair Access Protocol in place since 2006 and, through the Secondary Fair Access Sharing Panels (known as Sharing Panels), hard to place pupils, with the greatest need and who have not been able to secure a school place through the usual channels, have been found places in secondary schools or other suitable settings.

The Sharing Panels and the secondary school Behaviour Partnerships (a network of schools, the Pupil Referral Unit (PRU) and the local authority) have also contributed greatly to reducing the number of pupils who might have become hard to place through collaborative work, providing earlier interventions and an increased range of provision for pupils at risk of permanent exclusion. The majority of referrals to most panels are from schools or the PRU.

The operation of the Fair Access Protocol sits outside the arrangements for the coordination of school places and is triggered when a pupil has not secured a school place under the in-year admissions procedures.

Legal Advice confirms that the overwhelming majority of pupils, *including those categories of children (listed below) who are required by the School Admissions Code to be covered by a Fair Access Protocol*, will be offered a school place under the **normal in-year admission procedures**. The Fair Access Protocol will therefore only be triggered when a pupil has been unable to secure a school place under the in-year admissions procedures.

## **The Revised School Admissions Code**

The revised School Admissions Code 2012, which came into force on 1 February 2012, includes the following statutory requirements:

- All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.
- Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it **must** refer the case to the local authority for action under the Fair Access Protocol. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. The use of this provision will depend on local circumstances and **must** be described in the local authority's Fair Access Protocol. This provision will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs naming the school in question, as these children **must** be admitted.
- Admission authorities **must not** refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.
- A Fair Access Protocol **must not** require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school.
- The list of children to be included in a Fair Access Protocol is to be agreed with the majority of schools in the area but **must**, as a minimum, include the following children of compulsory school age who have difficulty securing a school place:
  - a) children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
  - b) children who have been out of education for two months or more;
  - c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;
  - d) children who are homeless;
  - e) children with unsupportive family backgrounds for whom a place has not been sought;
  - f) children who are carers; and

g) children with special educational needs, disabilities or medical conditions (but without a statement).”

In the event that a child who falls within one or more of the above categories, and, as outlined above, those with challenging behaviour where the governing body refuses to admit even though a place is available, who is unable to secure a school place under the normal in-year admissions procedures, then the Fair Access Protocol will be triggered.

***Resorting to the Fair Access Protocol and referring to Sharing Panels should not be the automatic default position for the categories of children listed above.***

### **Proposed operation of Birmingham Fair Access Protocol**

As is the case with many local authorities, Birmingham’s current Fair Access Protocol is focused on secondary age pupils with challenging behaviour. The current operating model involves referrals to Sharing Panels run by schools in local partnerships (Networks). This forms part of the Local Authority’s Positive Behaviour Strategy. The Positive Behaviour Strategy includes a requirement that schools agree and operate a protocol which ensures that all schools admit a fair share of “hard to place” pupils. Funding is devolved to Networks and Consortia to ensure implementation of the Strategy at a local level.

The current Birmingham Fair Access Protocol, which was subject to extensive consultation with Secondary Head Teachers, Secondary Heads Forum, Positive Behaviour Strategy Group, was ratified by Birmingham Admissions Forum and circulated via e-briefing to all Head Teachers in March 2010. The Protocol states that ***the majority of children, including those children in the categories listed in the School Admissions Code (2010), would be admitted to schools through the normal in-year admission process***; however, the Protocol states that secondary age children with challenging behaviour would be referred to Sharing Panels.

#### **Proposal:**

As previously indicated, the overwhelming majority of pupils are, and should continue to be, admitted to school under the normal in-year admission procedures. In the event of a governing body refusing to admit the pupil with challenging behaviour outside the normal admissions round, even though places are available, a referral will be made to the Local Authority for action under the Fair Access Protocol.

The Terms of Reference (Appendix A) sets out the role of the Local Authority and that of the Network and Consortia of Birmingham Schools.

The following amendments to the Fair Access Protocol are proposed in order to reflect the changes introduced by the School Admissions Code (2012) and the need

to ensure that all children of compulsory school age who have difficulty securing a school place are covered by the Fair Access Protocol. These proposals have been endorsed by the Birmingham Admissions Forum and by the Local Government Ombudsman.

- Any pupil who has been unable to secure a school place through the normal in-year admission procedures, will be referred to one of the seven networks or 16 consortia areas within Birmingham Local Authority ('Sharing Panels'). Referrals can be made by a number of local authority services, including School Admissions and Pupil Placements Service, Intergrated Family Support Team (IFST), Youth Offending Team (YOT), Behaviour Support Service or LACES. The referral will be supported by a Network or Consortium Adviser or appropriate Local Authority representative.
- Location of the Referral:
  1. If the pupil has recently moved to Birmingham, and cannot access a school place through the normal in-year admission process, a referral will be made to the Network / Consortium according to their home address. Local Authority's Cartology measuring system\* will be used to measure the nearest school.
  2. If the pupil has moved from one area of the City to another (over 6,000 metres from their current school) and cannot access a school place through the normal in-year admission process, a referral is made to the appropriate Network / Consortium according to their new home address, using Cartology measuring system, or
  3. If the pupil attended a school in Birmingham, within the last 12 months, the pupil is referred to the Network / Consortium in which that school is located, or
  4. If the pupil is offered a school place through the normal in-year admissions process, the school offered can request a referral to its Network/Consortium even though the pupil lives in a different Network/Consortium
  5. In exceptional and/or mitigating circumstances, such as where there are child protection issues, a referral can be made to a Network or Consortium in which the preferred or allocated school is located.

*\*The Cartology measuring system is the software used to as part of the process to locate over 40,000 school places within the local authority and is also used to assist in the preparation of over 2,500 applications for appeal hearings for places in maintained schools and academies in Birmingham. Using Ordance Survey data, Cartology calculates the distance, in straight line measurement, from the family's home address to the school(s).*

*The cartology system offers an accurate solution to the problem of which Network/Consortium a pupil belongs to by measuring the nearest school to their home address. In addition, by using cartology,*

*this will ensure a consistent approach in the identification of the nearest school to a pupil's home address. The previous post code database that was used would identify the appropriate network, but as the calculation was based purely on post code identification linking to a particular area, this could lead to a dual identification of Networks in some circumstances.*

- The Referral Criteria/Process:
  - i. Following the identification of a child who has been unable to access a school place through the normal in-year admission process, or following receipt of an application for a pupil that has challenging behaviour, a referral will be made to the appropriate Network or Consortium.
  - ii. A common referral form (see Appendix B) will be completed, indicating reasons for referral to panel. Evidence of the child's attendance and behaviour at previous schools will be provided, together with academic information and details of any other agencies currently involved with the child and/or family.
  - iii. The referral will include copies of background papers relating to the child. In the event that background papers are not available, evidence will be produced to demonstrate why this is so.
  - iv. The referral will also include reasons for the decision to refuse admission through the normal in-year admission process.
  - v. The common referral form will be completed in full with the most up to date information available and submitted to the appropriate Sharing Panel at least 8 days before the date of the next meeting.
  - vi. Prior to submission to Sharing Panel referral forms should be carefully checked by the Sharing Panel Coordinator (or nominated person) to ensure that the panel meeting is in a position to allocate a suitable placement without undue delay.
  - vii. Attendance at each meeting of the Sharing Panel shall as a minimum involve schools, representatives from Behaviour Support Service PRU, together with representatives from the Local Authority, who will represent the child and present the case to the Panel (e.g. IFST, YOT, School Admissions and Pupil Placements and/or Network / Consortium Adviser). The Local Authority Officer (or child's representative) will answer questions about the case. If no Local Authority Officer attends the Sharing Panel, the Panel can resolve the case by using the evidence submitted with the common referral form.
  - viii. The Sharing Panel should allocate a place in accordance with its agreed procedures, having due regard to any expressions of preference made by the pupil's parent(s).
  - ix. Once a school / academy or placement in alternative provision has been identified by the panel, it is expected that the child will be admitted to that school / placement ideally within 10 school days and as a maximum within 15 school days. The placement, attendance and

outcome for the child will be monitored by the Sharing Panel Coordinator (or their nominated person) or, in the case of primary referrals, the Consortium representative.

- x. In the case of secondary referrals, if the Sharing Panel concludes that a child may not yet be ready for mainstream schooling and further assessment is required, a place may be offered in alternative provision within the Network; however, regular monitoring of the progress of the child will be undertaken by the Sharing Panel Coordinator (or their nominated person) to assess their progress and review the appropriateness of the placement, ensuring the best possible outcomes for the child.
- xi. Every effort should be made to ensure that the panel allocates a place to each child referred under this Protocol. Where a Sharing Panel is unable to agree an appropriate placement, the Terms of Reference for each of the Network / Consortium Sharing Panels must contain procedures to ensure that a place is found in a school or, where appropriate, alternative provision within the time scales outlined above.

### **Ensuring timely decisions and suitable placements for all pupils**

Any difficulties or delay in securing the identified placement of any pupil will be referred to the Strategic Director for Children, Young People and Families, who will make a decision about the appropriate response; this may include an instruction to admit (community and voluntary controlled schools), a direction to admit (foundation and voluntary aided schools) or a formal referral to the Secretary of State, (academies).

In order to monitor and report on the operation of this Protocol, each Sharing Panel shall maintain minutes of each meeting and a record of placement decisions and outcomes.

Section 88P of the School Standards and Framework Act 1998 requires Local Authorities to make an annual report to the Schools Adjudicator. Amongst the requirements for such a report is that it includes an assessment of the effectiveness of Fair Access Protocols and co-ordination in the Local Authority's area, including how many children were admitted to each school under them.

School Admissions and Pupil Placements, on behalf of the Local Authority, shall complete the annual report to the Adjudicator and shall also report termly to Birmingham Admissions Forum on how many children have been admitted to each school in each Network / Consortium and how many refused, citing the reasons/actions taken. The Positive Behaviour Data Group shall request a more detailed return from each sharing panel at least annually.

## Appendix A

### **BIRMINGHAM FAIR ACCESS SHARING PANELS**

#### **DRAFT TERMS OF REFERENCE**

These terms of reference dated:

Between:

- (1) Birmingham City Council Directorate acting as the Local Authority ('the LA')
- (2) The Network and Consortia of Birmingham Schools

#### **Background**

- (1) The LA remains the admission authority for community and voluntary controlled schools in Birmingham. The Governing Body at voluntary aided and foundation schools is the admission authority at that school. The LA has the statutory power to direct a governing body to admit a child in their area
- (2) The Academy Trust is the admission authority at Academies. Where the LA considers that an Academy will best meet the needs of any child it can ask the Academy to admit. If the Academy refuses the LA will refer the matter to Secretary of State. Academies are required by their funding agreements to comply with the School Admissions Code.
- (3) School Admissions Code (2012) requires that all LA's must have a Fair Access Protocol agreed with schools and academies in its area. This is to ensure that, outside the normal admissions round, unplaced children, especially the most vulnerable, are offered a place a suitable school. All admission authorities must participate in the Fair Access Protocol.
- (4) The Network and Consortia will commit to the use of a Fair Access Sharing Panel ('the Sharing Panel') as an expression of its commitment to a collective responsibility for all pupils, to ensure that all schools admit a fair share of "hard to place " pupils, to intervene early to reduce exclusion, to improve behaviour and attendance and to ensure that schools are not asked to admit a disproportionate number of children who have been excluded or who have challenging behaviour.
- (5) A parent's statutory right of appeal to an Independent Admissions Appeal Panel shall not be limited in any way by the existence of the Sharing Panel or any decision of the Sharing Panel and any decision of an Independent Admissions Appeal Panel shall take precedence.

This document sets out the terms of reference for the Sharing Panel and the roles of the Parties and shall be varied only in writing and with the consent of all the Parties.

1. Where a governing body does not wish to admit a child with challenging behaviour, even though they have places available, the school must refer to the LA for action under the Fair Access Protocol. The reasons for refusal must be communicated to the LA in writing.

2. The Sharing Panel shall receive referrals from Local Authority services and agencies (e.g. BSS, LACES, School Admissions and Pupil Placements, ESW, IFST, YOS,) and directly from schools. Pupils referred to the panel should fit the following criteria:
- meet the stipulations of the LA Fair Access Protocol
- and either:
- reside within the area of the network or consortium as defined by the Local Authority
  - on roll at a school within the network or consortium
  - attend a BSS centre within the area or
  - been permanently excluded from a network or consortium school within the past 12 months
  - previously attended a school within the network or consortium within the past 12 months
  - has moved across Birmingham and lives over 6,000 metres from the previous school

For clarity, those pupils with statements of special educational need will not be referred to the panel.

3. In exceptional circumstances (as agreed by the Sharing Panels Operational Group) a Sharing Panel in one network or consortium may refer the case of a hard to place pupil that attends a school within the network or consortium, but does not live within that network or consortium area; to their home area network/consortium Sharing Panel, should a school placement within the school network/consortium area not be practicable. In such circumstances the home network/consortium sharing panel would need to agree to receive the referral before it is made and the timelines for placing a pupil as set out in the Fair Access Protocol need to be observed
4. The Sharing Panel shall decide who is to notify parents and the named school of the Sharing Panel's decision as soon as possible and at the most within 5 school days.
5. The member schools of the Network or Consortia shall admit pupils placed at their school without delay, ideally within 10 school days and, as a maximum within 15 school days. The receiving school shall report the start date for a particular case back to the Sharing Panel. The Sharing Panel shall ensure that any resources that are agreed to support the placement are made available wherever possible without delay.
6. The Network/Consortium will agree on the number of representatives for the Sharing Panel and it shall be left to the Network/Consortium to decide whether to rotate the representatives or not. The network/consortium will

agree the administrative arrangements, referral dates, venues, etc most suitable to their needs. It is expected that each sharing panel will meet at least monthly so as to ensure that the admission timescales as set out in the School Admissions Code are adhered to.

7. The Sharing Panel shall comprise the nominated representatives of the headteachers of the Network/Consortium, BSS, and local authority services relevant to the actual cases referred. Referrals will be made using the agreed referral forms. The panel should ensure that the forms are checked in advance of the meeting so that any missing or incomplete information can be made available to the panel in order to comply with essential that timescales required by the Code.
8. The Sharing Panel shall meet regularly (in accordance with 6 above) during term time to consider all cases referred by the LA and schools and shall name the appropriate school for the pupil to be admitted to. It is expected that a school will be identified at the first time of referral to the sharing panel and that schools in the Network shall accept the decisions of the Sharing Panel.
9. In naming the appropriate school the Sharing Panel shall consider the individual circumstances of each case and shall select a placement appropriately prioritising the child's needs taking in to account the following considerations (in no order of priority):
  - Geographical
  - Appropriateness of school
  - Pupil's history
  - Balance of numbers of pupils moving in and out of the school
  - Vulnerability of the school
  - Size of year groups
  - Particular factors (such as local issues, siblings, etc)

The Sharing Panel shall regulate its own proceedings but shall aim to come to a decision in respect of a particular case. The Sharing Panel may also refer a pupil to the Birmingham Grammar Schools Sharing Panel, subject to the ability of the pupil being appropriate to that pupil being offered a placement at a grammar school. In the event of a decision as to suitable school not being possible the panel should have an agreed protocol appended to these terms of reference which identifies who in the network will make the final decision.

10. All sharing panels should ensure that relevant local authority officers have the names and details of the chair of the sharing panel and the primary contact and that any changes are notified to local authority officers without delay.