

1. Introduction

- 1.1. All local authorities must have a Fair Access Protocol developed in partnership with their local schools. The protocol is legally binding and is under-pinned by the School Admissions Code 2014.
- 1.2. The purpose of the protocol is to ensure that – outside the normal admissions round – unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. The protocol also aims to 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. (Paragraph 3.9 School Admissions Code 2014). Where required, schools must exceed their planned admissions number to admit children referred under the protocol.
- 1.3. In line with the School Admission's Code this protocol sets out how Fair Access arrangements will work in Brent in order to best meet the needs of children living in the area, and local circumstances. It also sets out how Brent Council meets the needs of pupils who are not ready for mainstream schooling.
- 1.4. The Fair Access Protocol links to related Council policies on In-Year Admissions, Children Missing from Education, School Exclusion, the Education Welfare Service prosecution policy and guidance on issuing School Attendance Orders and the Managed Move Protocol.
- 1.5. The Fair Access Protocol applies to all schools in Brent, including foundation and voluntary aided schools, Academies and Free Schools.

2. The Legal Framework

For local authorities

- 2.1. Local authorities have a legal duty to ensure that all children of compulsory school age, regardless of their needs and circumstances, are in receipt of suitable full-time education (Section 19, Education Act 1996) unless reasons that relate to their medical condition mean that this would not be in their best interests (Section 3 of the Children, Schools and Families Act 2010).
- 2.2. Every local authority must have a Fair Access Protocol, agreed with the majority of schools in its area, to ensure that – outside the normal admissions round - unplaced, children, especially the most vulnerable, are offered a school place as quickly as possible (Paragraph 3.9 of the School Admissions Code 2014).

- 2.3. The Fair Access Protocol must set out how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met. (Paragraph 3.9 of the School Admissions Code 2014).
- 2.4. 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 (Paragraph 3.9 School Admissions Code 2014).

For schools

- 2.5. All admission authorities must participate in the Fair Access Protocol so that unplaced children are allocated a place quickly (Paragraph 3.11 School Admissions Code).
- 2.6. 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 needs (Paragraph 3.13 School Admissions Code 2014).
- 2.7. Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though there are places 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. 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 or Education, Health and Care Plan naming the school in question, as these children must be admitted. (Paragraph 3.12 School Admissions Code 2014).
- 2.8. There is a statutory requirement for education records and common transfer files to be transferred to the new school no later than 15 school days after a pupil is removed from a school's roll (Regulation 9, The Education (Pupil Information) (England) Regulations 2005).
- 2.9. Pupils must not be removed from the school's roll until it is confirmed by the local authority that they have started at a new school (The Education (Pupil Information) (England) Regulations 2006).

For parents

- 2.10. Parents have a legal responsibility to ensure that all their children of compulsory school age are receiving a suitable education (Section 7, Education Act 1996).
- 2.11. Parents can express a preference for the schools they wish their child to be considered for, but if their child is allocated a place under the Fair Access Protocol, there is no duty to comply with parental preference (Paragraph 3.11, School Admissions Code). However, parental wishes will be taken into account in making allocations where possible.

3. The Brent Context

- 3.1. There are 15 secondary schools in Brent, all of which are either foundation or voluntary aided schools or academies or free schools. All secondary schools in Brent are their own admissions authority. There are 63 primary schools in Brent including one free school.
- 3.2 Brent schools are generally successful and popular and there is constant pressure for school places across the borough. There is also considerable mobility in the population, with significant numbers of new arrivals to the UK settling here. There is pressure on school places in the primary phase and in years 10 and 11 in secondary schools. The Council has sought to address this issue by adding capacity through a number of initiatives, including the opening of new temporary classes in primary schools, special projects for newly arrived secondary age pupils who need intensive language support, and the development of new schools.

4. The Scope of the Fair Access Protocol

- 4.1. The operation of the Fair Access Protocol is outside the In Year admissions process and should not be used to circumvent that process. It only applies to **unplaced** children who are not on the roll of a school, or being educated otherwise than at school, and who fall into the following categories:
 - Children from the criminal justice system or attending PRUs who are ready to be reintegrated back into mainstream education;
 - Children who have been out of education for longer than two months and/or are ready for mainstream schooling but remain without a place following the In-Year admission process;
 - Children whose parents have been unable to find them a place after moving to the area, because of a shortage of school places;
 - Children of Gypsies, Roma, Travellers and refugees and asylum seekers;
 - Children who are homeless;
 - Children with unsupportive family backgrounds for whom a place has not been sought;
 - Vulnerable children, including those with a child protection plan and/or designated children in need;
 - Children without a school place and with a history of serious attendance problems;
 - Children who have been refused admission by a school on the basis of their challenging behaviour (see 5.12 and 5.13)
 - Children who are carers;
 - Children with special educational needs, disabilities or medical conditions (but without a statement); and
 - Children of UK Service personnel and other Crown Servants.

- 4.2 Children with a Statement of special educational needs or Education Health and Care Plan (EHCP) do not form part of the Fair Access admission arrangements. Children with SEN Statements/EHCP's must be admitted to the school named on their Statement/Plan.
- 4.3. Most children who fall within the Fair Access Protocol will still be placed through normal In-Year admissions processes or included within the scope of the Children Missing Education Protocols and Policies. However, children from the criminal justice system or attending PRUs who are ready to be reintegrated back into mainstream education will be automatically referred to the primary or secondary Fair Access Panel in order to identify suitable schools. In such cases, the panel will be provided with a Risk Assessment in addition to the standard information provided to the Panel in order to assist them in making a decision about whether mainstream schooling is a suitable option.
- 4.4. Where pupils fall within the Fair Access protocol and remain without an offer after In-Year processes, they will be referred to the Primary or Secondary Fair Access Panel, both of which will be chaired by a representative Headteacher, to identify a suitable school placement. Terms of reference for the Fair Access Panels are set out in **Appendix One**.
- 4.5. Once a decision has been made, the local authority will inform the school of the decision in writing within 48 hours. The school will then have 5 school days from receipt of notification to arrange the admission and notify the parent, with all children given a start date within 10 school days of the referral from the Panel. The school must notify the local authority of agreed start dates.
- 4.6. If at the point of admission the school has genuine concerns about the child's admission – for example, if new information becomes available that was not disclosed at the point of admission, the school must refer the case back to the Fair Access Panel within 5 school days, clearly outlining why the child should not be admitted. The case will then be reconsidered by the Panel (see section 7 below).

5. Operating Principles and Arrangements To Achieve Fair Access

- 5.1. A referral will not be made to the Fair Access Panels where a place exists in the relevant year group in any Brent school unless the child meets one of the criteria in paragraph 4.1 of the protocol and there are specific reasons why that child cannot take up a vacancy.
- 5.2. The operation of the Fair Access Protocol will be fair and transparent and will include representatives of mainstream schools in the decision-making process. A Head Teacher representative will chair the Fair Access Panels on a rota basis.
- 5.3. For both secondary and primary pupils, the Fair Access Panels will consider the following information to inform their decisions about placements.:
 - The pupils date of birth and year group;
 - Names of the school closest to the child's home address together with the number of pupils on roll and total pupil capacity in the relevant year group;
 - Names and dates of birth of siblings attending any of the schools identified;

- The total number of pupils previously admitted via the Fair Access Protocol at each Brent school in the academic year, by year group;
 - The total number of pupils previously admitted as a result of successful managed moves, by year group;
 - Details of any known educational needs;
 - Parental preference – parents’ preferences, including religious preferences, will be considered by the Panel but will not override the allocated school, and;
 - A risk assessment (this is only for pupils who are being re-integrated from a PRU or the criminal justice system).
- 5.4. The Fair Access Panels will take account of any genuine concerns about the admission, for example a previous serious breakdown of relationship between the school and the family, or strong views about the religious ethos of the school. However, such considerations will not override placements under the protocol that are agreed by the Panels.
- 5.5. Where required, schools must exceed their admissions number to admit children referred under the protocol. Schools cannot cite over-subscription as a reason for not admitting a pupil once they are classified as qualifying for admission under the protocol. Fair Access children must also be given priority for admission over others on the school’s waiting list or those awaiting an appeal.
- 5.6. The Fair Access Panels will ensure that no school is asked to admit a disproportionate number of unplaced children with challenging behaviour and will not expect a school automatically to take another child with challenging behaviour in place of a child excluded from school (Paragraph 3.14 School Admissions Code).
- 5.7. The Fair Access Panels will allocate pupils to both over and under-subscribed schools on a fair, equitable and consistent basis. Schools are expected to admit children allocated by the panel including when the allocation was made in the absence of a representative from the school.
- 5.8. Additional pupils will also be admitted under the Fair Access Protocol at Key Stage 1 where they fall within accepted exception criteria to the Infant Class Size regulations (see Paragraph 2.15 of the School Admissions Code).
- 5.9. Where appropriate, additional funding may be made available to support a pupil place under the protocol. This may be the remaining proportion of the age related pupil unit (AWPU) or additional funding to support individual pupil needs. The Council may also offer additional help to reintegrate pupils who have previously been excluded – for example, by providing on-going support from specialist inclusion staff in the mainstream setting or a dual registration arrangement where, for a short time-limited period, the pupil spends part of the week in a PRU and part of the time in the school to ensure a smooth transition.¹
- 5.10. Schools will work together and with the local authority collaboratively to support the Fair Access process, sharing information in order to secure the best possible outcomes for children.

¹ In February 2014 Schools Forum agreed that an additional £35k per year should be made available to support previously permanently excluded pupils who are re-integrating to mainstream.

- 5.11. Parents will work collaboratively with schools and the local authority to ensure that the most suitable provision is identified for their child, sharing relevant information in order to secure good attendance and behaviour at the allocated provision.
- 5.12. 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 referral under the Fair Access Protocol – through the completion of a FAP referral form which must be completed by the school and forwarded to the School Admission Team. However, this is only appropriate where the school has a particularly high proportion of children with challenging behaviour, or previously excluded children and this should be evidenced with the referral.
- 5.13. For the purposes of this Fair Access Protocol, challenging behaviour is defined as:
- * Serious criminal behaviour resulting in a conviction or a police caution within the previous two years preceding the request for a school place;
 - * Behaviour resulting in a permanent exclusion within the last two years preceding the request for a school place;
 - * Behaviour resulting in a significant number of fixed term exclusions (or other evidenced and accepted in-house alternative intervention) from which it is clear that the child is at serious risk of permanent exclusion within a period of at least one year preceding the request for a school place.
- 5.14. Inclusion Support Officer will provide support during the reintegration period. The Inclusion Support Team is also able to offer a range of clinical and non-clinical expertise when schools makes a referral. Following successful reintegration, the reintegration fund of £1500 and APWU funding will be transferred to school.

6. Provision for Pupils Not Ready for Mainstream School

- 6.1. Fair Access Protocols must include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met (Paragraph 3.9 School Admissions Code 2014).
- 6.2. In Brent, alternative provision is made at local authority pupil referral units and through commissioned alternative education placements. Through the In-Year Admissions process, the Council also runs regular choice advice and assessment centres, run by Claremont High School Academy Trust , the circumstances of individual secondary sector pupils without a school place are considered. In some cases, a place at school-based ESOL project or a college place may be identified as the most suitable option for some of these pupils.

7. Appeals and Disputes

- 7.1. In cases where a school does not want to admit a child that has been referred to it under the Fair Access protocol, it must refer the case back to the local authority in five school days clearly outlining the reason(s) why the child should not be admitted.
- 7.2. If the Panel reconsiders the case and agrees that the original decision was appropriate, the school will again be asked to admit the child within 5 school days. If the Panel accepts the school's reasons for not admitting the child, another school placement will be agreed. In these circumstances, the new school will be asked to admit the child within five days and be given the reasons why the original school was unable to place the child.
- 7.3. If the school continues to refuse to admit the child following reconsideration by the Panel, the case will then be referred to the Strategic Director of Children and Young People for consideration, including the option to issue or seek direction² in line with the process set out in **Appendix Two**.

8. Managed Move Protocol

- 8.1. The Managed Moves process may be applied for pupils who are at risk of exclusion. Managed moves are agreed by headteachers to move pupils from one school to another school in exceptional circumstances deemed in the best interest of the child.
- 8.2. A copy of the Managed Move Protocol for Brent schools may be obtained by emailing pupil.referrals@brent.gov.uk

² The Council has the power to direct the authority for any maintained school in its area to admit a child even when the school is full, provided that the child has been refused entry to, or has been permanently excluded from, every school with a reasonable distance of their home and has not been permanently excluded from the identified school. Although the Council has no power to direct Academies, it can ask the Secretary of State to intervene and issue direction.

Appendix One

Terms of Reference for the Fair Access Panel*

*These TORs apply to both Brent's secondary and primary Fair Access Panels

Purpose

The primary purpose of the Panel is to allocate pupils who fall within the remit of Brent's Fair Access Protocol to mainstream schools, taking into account:

- The pupils date of birth and year group;
- Names of the school closest to the child's home address together with the number of pupils on roll and total pupil capacity in the relevant year group;
- Names and dates of birth of siblings attending any of the schools identified;
- The total number of pupils previously admitted via the Fair Access Protocol at each Brent school in the academic year, by year group;
- The total number of pupils previously admitted as a result of successful managed moves, by year group;
- Details of any known educational needs; and
- Parental preference – parents' preferences, including religious preferences, will be considered by the Panel but will not override the allocated school
- Risk assessment (only for those children from PRUs and the criminal justice system who are ready for reintegration into mainstream education).

On consideration of individual cases, the Panel may, in exceptional circumstances, consider onward referral to alternative/out of school provision.

Membership

- Headteacher* (Chair)
- School representatives
- Head of EOTAS
- Admissions Team Manager

The KS 3 and 4 PRU (Brent River College) Head Teacher and representatives from Alternative Provisions will be invited to attend when the re-integration of a previously excluded pupil is being considered.

Officers involved in individual case may be invited to attend to provide further information at the Panel's request e.g. Education Welfare officer, Youth Offending Team, Social Worker, Inclusion Support Team staff, etc.

*Headteacher chair to be determined by agreement of the panel. All Headteacher representatives on the primary and secondary Panels will be drawn from the relevant school sector.

Role

- To direct pupils within the Fair Access Protocol to mainstream schools, taking into account previous admission under the FAP school capacity, travel arrangements, sibling placements and parental preferences.

- To direct pupils not considered ready for mainstream schools to appropriate alternative and/or out of school provision.
- To agree the support to be provided by the Council to support the placement in a mainstream school (funding and other support).

Frequency of meetings

The Panel will meet half-termly, provided that there are cases to be considered by the Panel.

Administration and support

The Panel will be supported by the Council's Officers. Papers for each meeting will be sent out at least seven working days ahead of the Panel dates.

Panel dates/venues will be agreed with the designated Panel Chair at the start of each school term.

APPENDIX TWO: Fair Access Protocol Directions Flow Chart



