

Fair Access Protocol

Secondary Schools

Revised January 2020

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1. INTRODUCTION

- The purpose of Middlesbrough's Fair Access Protocol, developed in partnership with local schools, is to ensure that - outside the normal admissions round - unplaced children, especially the most vulnerable, are found and offered a place at a suitable school quickly, so that the amount of time any child is out of school is kept to the minimum.¹ (See Appendix A)
- The intention of this revised protocol is to support improved attainment outcomes. Account will always be taken of the needs of the child and the needs of the school.
- This document refers to Middlesbrough Local Authority (LA) 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.

2. PRINCIPLES

- Every Local Authority (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 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.
- Schools should work together collaboratively, taking into account the needs of the child and those of the school. There is no duty to comply with parental preference when allocating places through the Protocol but consideration of the wishes of the parents and children 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.
- Fair Access Protocols should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered.³
- 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.
- All of Middlesbrough's schools, alternative education providers and the LA will continue to work together to develop transparent arrangements to ensure an equitable distribution of children in Fair Access categories, taking in to account the educational requirements of the child and the needs of the school.
- Allocation of places under the Fair Access Protocol will be undertaken during weekly term-time Fair Access Meetings.
- All schools are expected to respond to requests by the LA to admit a child under the Fair Access Protocol within seven calendar days.

¹ Department for Education, *Fair Access Protocols: Principles and Process, Departmental Advice (November 2012)* p. 3

² Department for Education, *Fair Access Protocols: Principles and Process*, p. 3

³ Department for Education, *Fair Access Protocols: Principles and Process*, p. 3

- Every effort must be made by the school to admit an allocated child as soon as it is possible to do so. In accordance with The Registration (Child Registration) Regulations 2006 the school must place the child's name on the admissions register from the beginning of the first day on which the school has been notified that the child will attend the school.
- If, **under exceptional circumstances**, a school wishes to refuse to place a child allocated under the protocol, the school must respond within seven calendar days indicating in writing its reasons, in detail, for doing so. This decision and the reasons for reaching it will then be considered at the next Fair Access Meeting. If it is felt that the reasons given substantiate the refusal, another school will be invited to admit the child. If it is felt that the reasons given do not substantiate the refusal to admit the child then the local authority will consult with the head teacher and governing body of the school, the parent and the child. If following consultation the school still refuses to admit the child, the Head of Access to Education at the Local Authority will be asked to review the case and arrive at a final determination. This determination will either be to allocate the child to a different school, or to seek to direct the school to admit the child. Where necessary direction will be sought from the Secretary of State (see below).
- Where a school identifies additional support is required then it should evidence their graduated response and have the opportunity if required to apply for higher needs funding and the ability to refer the child to the Pupil Placement Panel. Information in relation to this is outlined in the Pupil Placement Panel Document.
- If the LA seeks to direct a school to admit a child, the head teacher and governing body of the school will be notified. The governing body of a maintained school can appeal by referring the case to the School Adjudicator within 15 calendar days of receiving the notification.
- In the case of an Academy refusing to admit a child the LA will apply for a direction from the Secretary of State via the Education Funding Agency.
- Looked after children are not subject to the protocol as all schools include them within their usual admission arrangements although there will be times when dual registration with alternative providers may be appropriate.
- Children within the Fair Access categories will be allocated fairly across the schools in Middlesbrough and while parental preference will be considered it will be overridden by this protocol when appropriate to do so. To support improved attainment outcomes, account will always be taken of the needs of the child and the needs of the school.
- The overriding principle of the Fair Access Protocol is to ensure a fair and transparent allocation of children within the categories. Schools being at or above their Published Admissions Number (PAN) will not be grounds for a school to refuse to admit a fair access child.
- All children arriving in the authority must be placed on a school roll; however in a small number of cases, some children may be better placed within alternative provision. They will be required to be dual registered and subsequently integrated into the mainstream school where appropriate to do so.

- Schools 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 needs⁴.
- It is acknowledged that some children with challenging behaviour would benefit from being educated other than in mainstream schools for periods of time, e.g. in alternative provision.
- All permanently excluded children should access education provision from the sixth day of their permanent exclusion, when they will be assessed in order to determine an appropriate education placement. Some children will be placed into a mainstream setting others will require alternative provision.
- In exceptional circumstances the number of children allocated under this protocol may be restricted for an agreed period of time, e.g. a restriction on the number of children for half a term following an Ofsted judgment of requires improvement/inadequate.
- The Fair Access Table will be maintained by the LA and updated weekly following the Fair Access Meeting and distributed to schools electronically.
- The scope and effectiveness of the Fair Access Protocol will be reviewed at the final Fair Access Meeting of each academic year. In the event that the majority of schools in Middlesbrough can no longer support the protocol, all school heads should initiate a review with the LA. The existing protocol however remains binding on all schools up until the point a new one is adopted.

3. KEY STATUTORY GUIDANCE

3.1 Routine In-Year Admissions:

- In accordance with the School Admissions Code, most children requiring an in-year transfer will continue to be admitted under routine admission procedures. The Fair Access Protocol will only be used when a parent of an eligible child has not secured a school place under in-year admission procedures⁵.
- Any parent can apply for a place for their child at any time to any school outside the normal admissions round.⁶
- With the exception of designated grammar schools, all maintained schools, including schools designated with a religious character, that have enough places available **must** offer a place

⁴ Department for Education, *School Admissions Code*, 'Statutory guidance for admission authorities, governing bodies, local authorities, schools adjudicators and admission appeals panels' (December 2014) s. 3.13, p. 30

⁵ Department for Education, *School Admissions Code*, 'Statutory guidance for admission authorities, governing bodies, local authorities, schools adjudicators and admission appeals panels' (December 2014) s. 3.10, p. 30

⁶ Department for Education, *School Admissions Code*, 'Statutory guidance for admission authorities, governing bodies, local authorities, schools adjudicators and admission appeals panels' (December 2014) s. 2.21, p. 27

to every child who has applied for one, without condition or the use of any oversubscription criteria.⁷

- Admission authorities **must not** refuse to admit a child solely because:
 - a) they have applied later than other applicants;
 - b) they are not of the faith of the school in the case of a school designated with a religious character;
 - c) they followed a different curriculum at their previous school;
 - d) information has not been received from their previous school; or
 - e) they have missed entrance tests for selective places.⁸
- **In accordance with The Registration (Child Registration) Regulations 2006 for a routine in-year admission the school must place the child's name on the admissions register from the beginning of the first day on which the school has been notified that the child will attend the school.**

3.2 Fair Access Protocol Admissions:

- In accordance with the School Admissions Code each 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 place at a suitable school as quickly as possible. In agreeing a 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 protocol **must** include how the local authority will use provision to ensure that the needs of children who are not ready for mainstream schooling are met
- The operation of Fair Access Protocols 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.
- All admission authorities must participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly.⁹

4. KEY SUCCESS FACTORS ¹⁰

DfE research has shown that the following factors are essential to ensure that Fair Access Protocols work effectively. (See Appendix B)

- The Fair Access Protocol is kept simple and regularly reviewed;
- Protocols are led and owned by heads and principals - the Fair Access Protocol works when all schools are signed up to it;

⁷ Department for Education, *School Admissions Code*, s. 2.8, p. 22

⁸ Department for Education, *School Admissions Code*, s. 2.9, p. 22

⁹ Department for Education, *School Admissions Code*, s. 3.9, 3.10 & 3.11, p. 30

¹⁰ Department for Education, *Fair Access Protocols: Case Studies*, (November 2012) p. 3

- Protocols are seen as fair and transparent - trust, consistency, openness and honesty are essential;
- Good relationships with all heads - admissions teams and exclusions officers are known and respected by the heads;
- All schools know the Admissions Code and the Fair Access Protocol applies to them;
- Regular, carefully timed panel meetings, attended by those with decision making responsibility;
- In-depth information is needed from the child's previous school;
- The availability of alternative provision, support and funding;
- Fair Access Protocols work when schools recognise they have wider responsibilities to their community.

5. FAIR ACCESS PROTOCOL- SECONDARY SCHOOLS

5.1 FAIR ACCESS CATEGORIES

The School Admissions Code identifies that the following categories (a) to (g) **must** be included within the Fair Access categories; additional categories, however, can be locally agreed. Prior to each panel meeting the Local Authority Admissions Team will consider the current applications and identify those children which fall within one of the categories below who have difficulty securing a school place:

- a) **Children from the criminal justice system or Child Referral Units who need to be reintegrated into mainstream education.**
- b) **Children who have been out of education for two months or more. (8 school weeks)**
- 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.**
- g) **Children with special educational needs disabilities or medical conditions (but without a statement or Education, Health and Care Plan).**
- h) Children living in refuges or re-housed as a result of domestic violence.
- i) Children who move into Middlesbrough during Y11.

- j) Children whose parents have been unable to find them a place after moving to Middlesbrough, because of a shortage of places.
- k) Children without a school place and with a history of serious attendance problems; for the purposes of this protocol defined as less than 70% (subject to continuous review)
- l) Children of UK service personnel and other Crown Servants.
- m) Children newly arrived in Middlesbrough with challenging behaviour.¹¹

5.2 PROCEDURE FOR FAIR ACCESS ADMISSION – SECONDARY SCHOOLS

The flowchart of page 9 outlines the procedure for the allocation of children under the Fair Access Protocol.

After consultation with secondary schools it was agreed that Middlesbrough LA would adopt an allocation model which is based on the number of children allocated places under the Fair Access Protocol for the previous academic year. The total number of children allocated under the Fair Access Protocol is divided in proportion to the number of children on roll in each school as of the first day after October half term to give an individual indicative school allocation number.

The allocation model for the academic year 2019/20 is as follows:

Acklam Grange School	allocation number 16
Macmillan Academy	allocation number 14
Outwood Academy Acklam	allocation number 14
Outwood Academy Ormesby	allocation number 10
The King's Academy	allocation number 14
Trinity Catholic College	allocation number 13
Unity City Academy	allocation number 9

- In order to manage the allocation of children places will be allocated up to the 50% point of each schools allocation number and no further allocations will be made to those schools until all schools reach the 50% point. The school allocation model would then resume until all schools reach the 100% point on their respective allocation number. In the event of demand exceeding places at this point the members of the Fair Access Meeting will review the situation and recommend additional numbers (e.g. 1 per school)
- The Admissions Team will allocate Fair Access Protocol children within the allocation model during the weekly Fair Access Meeting taking into consideration parental preference and the address of the family. Once the child is on roll, a point will be awarded on the Fair Access table. Every effort should be made to admit an allocated child as soon as it is possible to do so.

¹¹ Children who have been permanently excluded, have a number of fixed period exclusions or present with a number of behaviours that are anti-social and are exhibited through constant disruption, aggression or minor criminal activities. These behavioural issues must be evidenced and documented by a range of involved professionals.

- If the school has already reached its allocation number the Admissions Team will allocate to the next school within the model taking into consideration parental preference and the address of the family.
- 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 Fair Access Meeting for consideration. If it is felt that school should admit the child then schools will be advised and consultation will take place between the head teacher, the governing body of the school, the parent and the child. If agreement is not reached Middlesbrough LA's Head of Access to Education will be asked to determine whether or not the school should admit the child, and if required will direct the school or seek a direction from the Secretary of State
- If the LA's Head of Access to Education, after considering the allocation of the child and the argument for refusal presented by the school, determines that the child should not be allocated to the identified school then discussions will take place regarding suitable school placement and if necessary an alternative school may be allocated using the Fair Access Protocol.
- The allocation decision made by the LA's Head of Access to Education will be binding on all schools. Refusal by a school to take on roll an allocated child will result in the LA requesting the Secretary of State, via the Education Funding Agency, to direct the school to admit the child.

To allow scrutiny and observation of the application of the Fair Access Protocol by the Admissions Team the following is to be adopted:

- The Admissions Team will during term time, each Wednesday at 10am, convene and minute a meeting to discuss and allocate to schools any pupils identified as Fair Access. School representatives are welcome to attend, however advance notice should be given to allow the booking of an appropriate room.
- All schools will be sent the minutes and the Fair Access Table after the meeting. Schools with children allocated will be notified of the allocation by email detailing the individual details.
- The school must notify the Admissions Team of the intended start date for the child.
- The Fair Access table will not be updated until children have been placed on roll. Therefore, it is in schools' best interests to notify The Admissions Team as soon as a child goes on roll to ensure the table is accurate and accrued points are taken into account at the next meeting. If, **under exceptional circumstances**, a school wishes to refuse to place a child allocated under the protocol, the school must respond within seven calendar days indicating in writing its reasons for doing so.
- Where a child is identified as being suitable for consideration under the Fair Access Protocol parents will be notified of this in writing along with their right to appeal to their preferred school.
- Families will only be notified of their allocated school place under the Fair Access Protocol when a school has confirmed they are admitting the child. The school must notify the

Admissions Team of an intended start date as this will be communicated by the Admissions Team to the family, this information must be provided without delay.

Fair Access Protocol Flowchart- Secondary Schools

