



Fair Access Protocol 2020/21



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1 July 2019	1.0	Sarah Lewis	Final version agreed by FAP Review Group
4 June 2020	1.1	Sharon Hindley	Draft changes for 2020/21
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1. Interpretation

In this Protocol:

‘Pupil Placement Partnership’ (PPP) means the panel that meets each week during term time to consider placement requests for pupils who fall under the relevant sections of the Fair Access Protocol and pupils who require an Alternative Provision Academy (APA) placement;

‘APA Partner’ means the Wave Multi Academy Trust – the commissioned provider of alternative education provision as delivered through Alternative Provision Academies (APAs);

‘school’ means a community, foundation, voluntary-controlled (‘VC’), voluntary-aided (‘VA’), or trust school which is maintained by Cornwall Council or an academy or free school (but not a special school);

‘in-year application’ means any application for a school place in Years R to 11 at a school received during the school year;

‘parent’ means a parent/carer/body which has Parental Responsibility for the child;

‘PAN’ means the Published Admission Number for the year of entry at a school. ‘AN’ means the Admission Number for all year groups other than the year of entry to a school. The PAN/AN is the maximum number of children that can be admitted to that year group.

‘Unplaced’ in this Protocol will include children that remain on the roll of a school but no longer have a school place that is within reasonable travelling distance of the home address.

‘Reasonable travelling distance’ for a secondary age child is considered to be 10 miles, extended to 18 miles for those living in the designated area of Budehaven Community School with travelling times not exceeding 75 minutes. For a primary age child it is considered to be 5 miles with travelling times not exceeding 45 minutes. The distances are measured as the shortest available route as determined by Cornwall Council’s Geographical Information System. This is considered to be the walking route of up to two miles for primary school children up to the end of Year 3 and three miles from Year 4 onwards. For schools outside these distances, driving route will be used. Unlike when eligibility for free home to school transport is assessed, the suitability and safety of the walking route is not taken in to consideration when determining these distances; Any exceptions to this definition will be decided by the Nominated LA Officer.

‘Challenging behaviour’ is defined as behaviour that is persistent and ongoing despite school intervention under its behaviour and discipline policy. Challenging behaviour would be evidenced by some or all of the following: time in inclusion, fixed term exclusions, governors’ meetings, a pastoral support programme or behaviour support plan being in place.

2. Introduction and principles

- 2.1.** This Fair Access Protocol ('the Protocol') is written in accordance with the School Admissions Code 2014 (issued under Section 84 of the School Standards and Framework Act 1998) and applies to all community, voluntary-controlled, voluntary-aided, foundation, trust, academy and free schools in Cornwall and to admissions in the academic year 2020/21.

The Admissions Code 2014 states (section 3.11): 'All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly.'

- 2.2.** The majority of in-year applications will be straightforward and places will be allocated where the number on roll in the year group in question is below the PAN or AN. However, the Admissions Code 2014 states: '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.'
- 2.3.** Referral under the Protocol must not be used as a means to circumvent normal admissions procedures. 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 refused. The Fair Access Protocol is triggered when an eligible child is unplaced, outside the normal admissions round.
- 2.4.** Children in Care (also known as 'looked after children') or children that were previously in care¹ and/or children with a Statement of Special Educational Needs or an Education, Health and Care (EHC) Plan will be dealt with outside the Protocol. These children will be referred through Cornwall Council's Virtual School and/or Statutory SEN Service as appropriate.
- 2.5.** Children in Care, children that were previously in care and children placed through the Protocol take precedence over children on a school's waiting list.
- 2.6.** There is no duty upon the Admission Authority or Cornwall Council to comply with parental preference when allocating places through the Protocol. However, the allocation of places in accordance with a Fair Access Protocol does not override a parent's right to appeal to an independent appeal panel against the refusal of a place at any school for which they have applied. The right of appeal is withdrawn for a child who has

¹ A 'child in care' is also referred to as a 'looked after child' and is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989). A child 'previously in care' is a child that was in care but immediately after being in care became subject to an Adoption, Child Arrangement Order or Special Guardianship Order.

been twice permanently excluded where the last exclusion was within the last two years (Admission Appeals Code, Section 6).

- 2.7.** Where a school refuses to take a pupil under the Fair Access Protocol, Cornwall Council will consider whether the process of Direction, in line with the Admissions Code 2014, should be followed.

3. Consideration under the Protocol

- 3.1.** In the first instance, the School Admissions Team will consider whether or not an in-year application falls under the Fair Access Protocol. The Fair Access Protocol will only apply where an eligible child is unplaced, outside the normal admissions round.
- 3.2.** Applications for eligible children who are unplaced outside the normal admissions round and considered by the School Admissions Team to fall under Level 1 of the Protocol will be handled in accordance with Section 5 of this Protocol. Applications for eligible children who are unplaced outside the normal admissions round and considered by the School Admissions Team to fall under Level 2 of the Protocol will be handled in accordance with Section 6 of this Protocol.
- 3.3.** Where a final decision is needed on whether or not the application falls under the Protocol, the application will be referred to the Nominated LA Officer² who will consider if it is appropriate to seek a place at a school under the Protocol, or whether normal admissions procedures should be followed.

Timing

- 3.4.** Applications which are eligible under the Protocol will be processed as a priority by the School Admissions Team. Timescales will depend on factors such as time needed to gather information to identify a suitable placement or the date of the next PPP meeting.
- 3.5.** During the process of securing a school place through the Fair Access Protocol, if a child has been or will be without an education placement for more than 20 school days from the commencement of the admissions process, the APA Partner may be asked to provide a place for the child to ensure that they are not out of education for an excessive amount of time in accordance with Section 7 of the Protocol.

² The 'Nominated LA Officer' will be a senior officer within the Education Directorate

4. Eligible children

- 4.1.** The categories of children who are considered 'vulnerable' and would qualify for consideration under the Fair Access Protocol are:
- i. children without a school place and with a history of serious attendance problems;
 - ii. children known to the police or other agencies;
 - iii. children who have been without a school place and out of education for two months or more (and not registered for Elective Home Education);
 - iv. children of Gypsies, Roma, Travellers, refugees, asylum seekers and migrant workers;
 - v. homeless children (including those in a registered refuge);
 - vi. children with unsupportive family backgrounds where a place has not been sought;
 - vii. children who are carers;
 - viii. children with special educational needs, disabilities or medical conditions (but without an Education, Health and Care Plan);
 - ix. children of UK Service personnel and other Crown Servants;
 - x. children whose parents have been unable to secure a school place within a reasonable travelling distance after moving to the area because of a shortage of places;
 - xi. children seeking a place in year 11 that have failed to secure one;
 - xii. children without a school place who for exceptional reasons and in the view of Cornwall Council should be considered vulnerable;
 - xiii. children returning from the criminal justice system or children accessing or previously accessing alternative education provision who need to be reintegrated back into mainstream education;
 - xiv. children that have been permanently excluded or were at risk of permanent exclusion before being withdrawn from a school and are now without a mainstream school place;
 - xv. children with a history of challenging behaviour or who have social, emotional, mental health or behaviour difficulties that are without a mainstream school place because they have not been able to secure one through normal admissions procedures.

5. Procedures: 'Level 1'

- 5.1.** For eligible children under Section 4.1 i to xii (that do not also fall under xiii to xv) that have failed to secure a place at a suitable school within reasonable travelling distance under normal in-year admissions procedures or for reasons related to their vulnerability remain unplaced at a suitable school, if the preference is for a designated or nearest school and that school is not already 5% above PAN or AN for the relevant year group, a place will be allocated at that school.
- 5.2.** If the preference is not for the designated or nearest school and there are reasons why placement at a particular school would be more appropriate a place will be allocated at the preferred school, as long as that school is not already 5% above PAN or AN for the relevant year group.
- 5.3.** If no preferences can be met, Cornwall Council will name an alternative school. This school would usually be the nearest appropriate school to the child's address that is not more than 5% above PAN or AN in the relevant year group.
- 5.4.** The 5% will be rounded down to the nearest whole number. For primary schools with a PAN or AN less than 20, 5% would be 0. As a result, these schools would be required to admit one child above the PAN or AN in the year group.
- 5.5.** However, no child will be placed above the PAN or AN in a school that has been judged by Ofsted in the last six months to be inadequate following a Section 5 inspection or Section 8 monitoring visit (i.e. is judged to require Special Measures or to have Serious Weaknesses) or in a primary school if admitting an extra child would breach the Infant Class Size Legislation, unless the child would be a permitted exception under the Admissions Code 2014 (paragraph 2.15). Consideration may also be given to the number of placements through the Fair Access Protocol that the school has already accepted during the academic year in which the place is requested and any other relevant factors.
- 5.6.** The School Admissions Team will initially consider whether or not an application falls under the Fair Access Protocol (Level 1). For applications where it is unclear if this section of the Protocol should be applied, the application will be referred to the Nominated LA Officer who will have the final decision on whether or not it is appropriate to seek a place at a school under the Fair Access Protocol or whether normal admissions procedures should be followed.
- 5.7.** If a child falling under Level 1 of the Protocol remains unplaced consideration may be given to referring the child to the weekly PPP. The PPP is used primarily for Level 2 cases and detailed in Section 6.

6. Procedures: ‘Level 2’

- 6.1.** Level 2 of the Protocol applies only to eligible children under Section 4.1 xiii to xv who are unplaced, outside the normal admissions round.
- 6.2.** The Admissions Code 2014 states that 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 application to Cornwall Council for action under the Fair Access Protocol. This will only apply where the child **does not have a school place** and cannot, therefore, be considered under the Managed Move Protocol (see Section 8) and will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. Referrals will be considered by the Nominated LA Officer who will consider if it is appropriate to seek a place at a school under the Fair Access Protocol (Level 2), or whether normal admissions procedures should be followed.
- 6.3.** Applications for the following children will automatically be handled under ‘Level 2’ of this Protocol:
- i. children returning from the criminal justice system or children accessing or previously accessing alternative education provision who need to be reintegrated into mainstream education but are without a mainstream school place;
 - ii. children that have been permanently excluded or were at risk of permanent exclusion before being withdrawn from a school and are now without a mainstream school place; or
 - iii. children with a history of challenging behaviour or who have social, emotional, mental health or behaviour difficulties that are without a mainstream school place because they have not been able to secure one through normal admissions procedures.
- 6.4.** Fair Access Level 2 placements of secondary-age children will be considered by the Pupil Placement Partnership (PPP). The PPP process ensures that a place can be secured at a suitable school as soon as possible whilst ensuring that no school is asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour.
- 6.5.** If a secondary-aged child needs a mainstream school place quickly which would ordinarily go to the PPP or where a school has referred the case back to Cornwall Council as described in Section 6.2, a school may be asked to take the child under the Protocol. The Nominated LA Officer will approach a school that is assessed as suitable using the criteria normally applied by the PPP. Schools may not refuse to consider the admission of a child that should ordinarily go to the PPP where that child is not in education and is considered vulnerable or delayed admission would have a particular negative impact. A school taking a child outside the PPP in this way will have the placement recorded under their allocations for the year, as defined under Section 6.13.

- 6.6.** The PPP meets weekly on a Wednesday during term time.
- 6.7.** The PPP will consist of the following membership/representation:
- Head of Education Access and Sufficiency or nominated deputy (Chair)
 - All Cornwall secondary schools – a senior leader/representative with delegated decision-making powers
 - Cornwall primary schools as and when required – a senior leader/representative with delegated decision-making powers
 - Virtual School
 - Statutory SEN Service
 - Education Psychology
 - School Admissions / Pupil Placement Manager
 - Senior Education Welfare Officer
 - School Effectiveness
 - Locality Managers, representing Early Help and Social Care
 - Health representative
 - Other professionals working with pupil – as and when required.
 - Representative from the Transport Coordination Service
- 6.8.** Non-attendance by a school representative at a PPP meeting does not preclude a decision to place a child at that school and these decisions are still binding.
- 6.9.** Administration of the Fair Access process and the PPPs will be the responsibility of the Nominated LA Officer who will chair the meeting and hold the minutes and related paperwork.
- 6.10.** An agenda and related paperwork will be circulated to PPP members by 5pm on the Monday before the meeting. Additional background evidence will be sought in each case to support the PPP decision-making process. Cornwall Council will gather information in relation to the child from their previous school, as far as possible, including behaviour records, attendance information and curriculum/progress information.
- 6.11.** Terms of reference will be in place for the PPP.
- 6.12.** There may be cases where the parent of a permanently excluded child refuses Cornwall Council's offer of a place at an APA and may need to submit an In-year Application as soon as possible after the exclusion. Parents will be encouraged to accept the APA place in order to support a successful reintegration to school, however, Cornwall Council cannot enforce this acceptance. Schools are able to enforce attendance at an APA for a child on roll if this is considered appropriate by the APA, therefore it is not expected that schools will refuse to accept children through Fair Access on the basis that they are not attending an APA.
- 6.13.** When deciding on a placement, the PPP will consider:
- i. parental preference;

- ii. if the school has been judged by Ofsted in the last six months to be inadequate following a Section 5 inspection or Section 8 monitoring visit (i.e. is judged to require Special Measures or to have Serious Weaknesses or is otherwise considered by Cornwall Council as needing significant support), in which case they are unlikely to be expected to take a placement through the PPP;
- iii. PAN or AN and number on roll (NOR) for the relevant year group, with a placement being unlikely where the school is more than 5% over that limit;
- iv. number of admissions to the relevant year group in the preferred school in the 'rolling year' under the Fair Access Protocol Section 6.14;
- v. all current cases due to be considered for the same year group and the impact of taking more than one child through the PPP at the same time;
- vi. distance to school measured by the nearest available route as determined by Cornwall Council's chosen Geographical Information System and whether or not this is 'reasonable travelling distance' and the cost implications;
- vii. evidence to support refusing parental preference, such as a previous serious breakdown of the relationship between the family and the school.

6.14. A child placed by the PPP, along with formal Managed Moves (confirmed through the Education Welfare Service), will be considered in relation to future PPP placements for a further five half terms from the date of the PPP decision. The 'rolling year' in the Protocol is defined as 'across six half-terms' rather than between specific dates. Schools may also request that placements of children with challenging behaviour outside the PPP be counted on the rolling record and this will be considered by the Nominated LA Officer and is only likely to be accepted where there is evidence that the child was previously at risk of permanent exclusion. This will include children with an Education, Health and Care Plan or Children in Care/Previously in Care. Although these pupils are not considered under the Fair Access Protocol they can be considered within the Rolling Record if they would otherwise have fallen under the Protocol if it were not for their SEN/Care status. A child will not be counted on the Rolling Record for a particular school if the child is no longer on roll or failed to start at the school, for whatever reason. If this happens, the relevant information will be shared at the next PPP meeting and the allocations record updated to reflect the removal of the child. Failed Managed Moves will continue to be shown on the Rolling Record to provide context in relation to the impact of the Managed Move on the school and the particular year group.

6.15. No proviso to the placement of a child through the PPP may be made by any school, such as acceptance only on the basis of a trial period or meeting certain attendance criteria. However, this does not remove the school's right to enforce alternative education provision attendance for any child on their roll and does not override any appropriate dual-registration arrangements relating to transition from an APA.

6.16. Children allocated a place at the PPP must be put on the roll of the allocated school within 10 school days of that meeting, even if the child will continue at an APA until their

reintegration is arranged, during which time they will be dual-registered between the school and APA. Where the child is in an APA, a period of review and continued support will be agreed between the school and the APA to support a successful reintegration. This will be led by the APA's exit strategy/reintegration plan for the child and in line with the APA's Admissions Arrangements Policy. Where a school has trouble making contact with a parent to arrange admission, the child must still be added to the school roll and normal attendance procedures should then be followed.

- 6.17.** Where a school wishes to challenge a decision by the PPP or a request to take under the Protocol, the case will be reconsidered by the Nominated LA Officer. If an agreement cannot be reached, the Service Director will decide on an appropriate course of action, including consideration of whether or not the process of Direction, in line with Admissions Code 2014, should be followed.
- 6.18.** Due to the number and dispersal of **primary schools** in Cornwall the PPP will not operate for primary school applications. Primary-aged children who meet the criteria under Section 6.3 should be placed, as far as possible and as quickly as possible, in a school close to the child's home address, although parental preference will be the first consideration for each placement. To this end, a school will be required to take a child where it is the highest named preference on the application form or it is the nearest school to the home address that does not fall into any of the following categories:
- i. the school has been judged by Ofsted in the last six months to be inadequate following a Section 5 inspection or Section 8 monitoring visit (i.e. is judged to require Special Measures or to have Serious Weaknesses), or is otherwise considered by Cornwall Council as needing significant support;
 - ii. the year group is full (up to the AN)*;
 - iii. to admit an extra child would breach the Infant Class Size Legislation, unless the child would be a permitted exception under the School Admissions Code (paragraph 2.15);
 - iv. the Fair Access limits under Section 6.21 have been reached;
 - v. there are reasons why the school would not be a suitable placement, as identified by the Nominated LA Officer in consultation with relevant professionals/colleagues, including potential transport provision that would not be cost-effective.

*However, if all preferred schools are full or fall into any of the other categories in this section, the definition of 'full' when looking at other schools will be defined as 'not more than 5% over PAN or AN', as defined in Section 5.

- 6.19.** The Nominated LA Officer will write to the identified school stating an intention to place the child under the provisions of the Protocol in the relevant year group, providing the Pupil Profile and any other relevant information, giving the school five days to respond to the intention letter after which the child will be allocated and must be accepted on roll. If the school does not wish to admit the child, they must respond in writing within five school days setting out their reasons for refusal which will be reviewed by the Nominated LA Officer.

- 6.20.** Before the principles in 6.18 are followed to identify which school will be asked to take the pupil, any school listed as a higher preference on the application form will first be approached to ask if it can offer a place under the Fair Access Protocol. This will give any preferred school the opportunity to confirm whether or not it can offer a place or to consider special circumstances such as siblings already being in attendance. If a place is refused, it will then allow the School Admissions Team to advise on the reason for refusal accurately in the allocation letter which will also need to set out the parent's right to appeal.
- 6.21.** Primary schools will not be expected to take more than one child under Level 2 of the Protocol in each cohort within a 'rolling year' and no more than two overall in the school within a 'rolling year'. Formal managed moves (i.e. those that are arranged through Cornwall Council) will count towards these limits. Therefore, a child under Section 6.3 placed through the Protocol will be considered against future proposed placements for a further five half terms from the date of the placement. The 'rolling year' in the Protocol is defined as 'across six half-terms' rather than between specific dates.

6.22. Elective Home Education Returners

For children returning from Elective Home Education and falling under one or more criteria in Level 2 of the Protocol, the previous school will generally be expected to take the pupil back on roll.

The following principles will be applied in relation to EHE pupils returning to the previous school:

- i. Placement at the previous school will not count towards allocations on the Rolling Record.
- ii. The previous school will be approached outside the PPP so that admission is not delayed.
- iii. Following readmission the previous school would be expected to continue to manage and address behaviour issues and arrange alternative education provision or a Managed Move as appropriate.

Exceptions to placement at the previous school will be applied as follows:

- iv. The previous school would not be expected to take the pupil back on roll if the family has moved outside reasonable travelling distance.
- v. The previous school would not be expected to take the pupil back on roll if the school is not listed by the parent as a preference **and** there are reasons why it would not be in the best interests of the pupil, as agreed by the Nominated LA Officer in consultation with linked professionals as necessary. In this situation the normal Fair Access Level 2 process would be followed and the subsequent allocation would be recorded on the Rolling Record.
- vi. In the case of primary schools, the previous school would only be expected to take the pupil where the year group is not already more than 5% over its PAN or AN and the admission would not breach the Infant Class size limit. However, Cornwall Council may still need to request the admission if there are extenuating circumstances.

7. Provision for children not ready for mainstream schooling or for whom discussions about a school place are ongoing

- 7.1.** Children living in Cornwall who do not have a school place and for whom it is considered that a period in alternative education provision is appropriate prior to reintegration to mainstream schooling or who have been permanently excluded will be provided for through the commissioned provider of Alternative Education Provision in Cornwall. A decision on whether or not alternative education provision is the most appropriate placement will be made by the Nominated LA Officer in consultation with professionals involved with the child.
- 7.2.** During the process of securing a school place through the Fair Access Protocol, if discussions are ongoing or a decision needs to wait until the next PPP and the child has been or will be without an education placement for more than 20 school days from the commencement of the admissions process (i.e. receipt of an in-year application by the School Admissions Team), the APA Partner will be asked to provide a place for the child to ensure that they are not out of education for an excessive amount of time, subject to the individual circumstances of the case.

8. Managed Moves

Children with a history of challenging behaviour that are on a school roll for whom a new school place is requested should normally be considered under the Managed Move Protocol rather than the Fair Access Protocol. However, under either Protocol, it should be remembered that parents are entitled to express a preference for a school at any point during the school year and Managed Moves should be arranged with the co-operation of the parents. The Department for Education's guidance 'Exclusion from maintained schools, academies and pupil referral units in England' (September 2012) states: 'Maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour. A pupil can also transfer to another school as part of a "managed move" where this occurs with the consent of the parties involved, including the parents.' Cornwall Council's Managed Move Protocol should be referred to and where such arrangements are made with the full support of Cornwall Council, these moves will be considered in relation to Fair Access (Level 2) placements at receiving schools to ensure an equitable distribution of children with challenging behaviour. For eligible children with challenging behaviour that are unplaced outside the normal admissions round, Section 6 of this Protocol will apply.

9. Review

The effectiveness of the Protocol will be monitored by the Nominated LA Officer in conjunction with the PPP Review Group and formally reviewed annually. Cornwall Council will report on admissions under the Protocol in its annual report to the Schools Adjudicator.

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