



Legal Basis for Fair Access Protocols

A. Admissions Code 2014

3.9 **Fair Access Protocols** - 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 pupils who are not ready for mainstream schooling are met.

3.10 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.

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. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

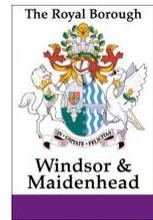
3.12 Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it **must** refer the case to the local authority for action under the Fair Access Protocol. This will normally only be appropriate where a school 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.

3.13 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.

3.14 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.

3.15 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 or EHC Plan).

B. Admission Appeals Code 2012

Expressing a preference and Fair Access Protocols

3.23 Paragraph 3.9 of the School Admissions Code requires each local authority to have a Fair Access Protocol to ensure that, outside the normal admissions round, a place at a suitable school is secured quickly for unplaced children, especially the most vulnerable. It also requires local authorities to ensure that no school is required to take a disproportionate number of children with challenging behaviour. In circumstances set out in its local authority's Fair Access Protocol, an admission authority may refuse to admit a child outside the normal admissions round even though places are available (see paragraph 3.12 of the School Admissions Code).

3.24 The allocation of a place in accordance with a Fair Access Protocol does not override a parent's right to appeal against refusal of a place at any school for which they have applied. If an application has been refused despite there being places available, the governing body **must** present their case for refusal, demonstrating how admission of the child would prejudice the provision of efficient education or efficient use of resources. When considering such an appeal, in addition to considering the appellant's arguments for their child to be admitted, the panel **must** take account of the requirements set out in the local authority's Fair Access Protocol. The panel **must** carefully consider whether the presenting officer has clearly proven that admission of the child would be prejudicial to the school or other children.