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Fair Access Protocol - Introduction

The Torbay In Year Fair Access Protocol has two main purposes – to ensure that:

1. outside the normal admissions round, unplaced children, especially the most vulnerable, are allocated a school place quickly; and
2. no school takes more than its share of children with challenging behaviour or children excluded from other schools.

The Protocol also explains how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.

All maintained schools and academies must participate in the Protocol. This requirement includes schools that are their own admission authority. This protocol has been agreed by a majority of the schools within Torbay. The Protocol is consistent with the requirements set out in paragraphs 3.9 to 3.15 of the School Admissions Code 2014, the non-statutory guidance published by the Department of Education in November 2012, the Education (Pupil Registration) (England) Regulations 2006 (as amended in 2016) and the School Standards and Framework Act 1998.

The published guidance from the Department of Education sets out a clear expectation from the Secretary of State that all state funded mainstream schools and local authorities should work together to identify a school place for those children who have had difficulty finding one. This guidance also states that all schools are expected to respond to requests by local authorities to admit a child under fair access protocols within seven calendar days.

The aims of the protocol are:

1. To ensure that the needs of vulnerable young people who are not on the roll of any school are dealt with quickly and sympathetically;
2. To ensure that the admission of fair access pupils is supported so that the placement succeeds;
3. To ensure that there is openness and fairness in the process;
4. To reduce the time that difficult to place pupils spend out of school;
5. To ensure that all schools admit their fair share (and that undersubscribed schools do not admit a greater proportion than other schools) of children with challenging behaviour.

**Principles of the Protocol**

* Every local authority 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.
* Decisions made under the protocol will be based on the needs of the young person, as well as of the agencies and settings supporting them.
* The Protocol applies to all students seeking a school place in the Torbay Local Area and is triggered when a parent of an eligible child has not secured a school place under in-year admission procedures.
* All mainstream schools must participate, including those that under normal admission arrangements have no places available in the relevant year group. Schools cannot use oversubscription as a reason not to admit a pupil under the scheme.
* Fair Access referrals are not available for use by Pupil Referral Units or Special Schools.
* Schools are responsible for referring pupils as potential Fair Access pupils.
* Schools will not be required to automatically take another child with challenging behaviour in a direct exchange for a child excluded from the school.
* There are no limits to the number of pupils schools will be required to admit under this protocol; places will be allocated in a proportionally balanced way which has regard to relevant factors including the size of the schools in the area, SEN levels, accessibility to and within the school, budgetary factors and individual school circumstances. Normally schools will be expected to admit 3% of pupils per year group based on number on roll in the October census.
* Grammar schools will only be asked to take pupils who meet their selective test criteria but must have arrangements in place to allow students newly resident in Torbay to undertake such testing.
* There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Protocol. Parents’ views will be considered but will not override the protocol if the preferred school is not considered the most appropriate allocation.
* When making placements the Pupil Referral Panel will take into account any special circumstances, including possible transport costs.
* The Fair Access Protocol should not be used as a means to circumvent the normal in-year admissions procedure. 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.
* Parents will be able to register an appeal at their preferred school whilst being offered a place at another school under this Protocol.
* Those who meet the protocol criteria will be given priority for admission over any others on a waiting list or awaiting appeal.
* Where pupils are returning to school following a period of unsuccessful elective home education, if this is within 8 weeks of leaving the roll of a school a place will be offered at that school even if the school is full in the relevant year groupunless this would breach infant class size legislation.
* Panel members will take account of any genuine concerns about the admission, for example a previous serious breakdown in the relationship between the school and the family, or a strong aversion to or desire by the family for the religious ethos of the school.
* On notification of an intended placement, schools (or other educational settings) must respond within 5 school days to the request so that the admission of the pupil is not unduly delayed.
* It will normally only be appropriate for a governing body to refuse admission of a child with challenging behaviour and refer them as fair access if there is already a particularly high proportion of children with challenging behaviour or previously excluded children. This must be specific to a year group and evidenced.
* The Head of Service for Vulnerable Pupils will assess the level of challenging behaviour in any school according to the criteria for challenging behaviour and evidence provided by the school. S/he will also assess whether a particular student meets the criteria for challenging behaviour and will make a recommendation to the Pupil Referral Panel.
* The protocol will apply to all children of statutory school age and those who will be 5 years old during the academic year and are therefore entitled to a place at a school.
* Where the Pupil Referral Panel has identified a placement schools will be expected to accept the pupil unless there are exceptional circumstances.
* While a child is on roll at a school the school concerned is responsible for the child’s educational provision.
* An application to direct from the Secretary of State will only be requested as a last resort.
* The Secretary of State will base his/her decision having regard to whether due process, in line with the locally agreed provisions in the Fair Access Protocol, has been applied appropriately.
* In the event that the majority of schools in Torbay can no longer support the principles and approach of the local Protocol, all the school heads should initiate a review with the local authority. The existing Protocol however remains binding on all schools up until the point at which a new one is adopted.

Definition of Fair Access pupils.

A pupil will be treated as a Fair Access pupil when a parent has not been able to secure a school place under normal in-year admission procedures and the child meets one or more of the following criteria:

1. Children from the criminal justice system or PRUs/alternative provision who need to be reintegrated into mainstream education
2. Children who have been out of education for two months or more\*
3. Children of Gypsies, Roma, Travellers, refugees and asylum seekers
4. Children who are homeless (including children living in refuges)
5. Children with unsupportive family backgrounds for whom a place has not been sought
6. Children who are carers
7. Children with SEN, disabilities or medical conditions (but without an Education, Health & Care Plan)
8. Children with a child protection plan in place
9. Children who were permanently excluded from their last maintained school placement and who are ready for re-integration to an alternative school.
10. Children returning to school following a period of unsuccessful elective home education
11. Children of Service Personnel resettling into the area immediately on discharge
12. Children whose parents have been unable to find them a place within statutory walking distance after moving to the area, because of a shortage of places and where normal admission processes have been unsuccessful
13. Children who have been refused a place at a school because they are believed by the school concerned to be challenging.

\* Provided the parents can demonstrate that, during the required period, they were actively seeking a school place and that they were living in the UK.

Other children requiring a school place will continue to be placed in accordance with the usual admission procedures.

**Who is not included in the Protocol?**

* Looked after children, previously looked after children or children with an education, health and care plan naming the school in question, as these children must be admitted to the school;
* Children in years 12 and 13, as there is no statutory requirement for them to attend school.

How the Protocol will operate for primary and secondary pupils up to and including Year 10

Primary aged pupils who meet the fair access category criteria should be placed as far as possible, as soon as possible, in the school of parental preference. Schools must adhere to Infant Class Size legislation if the year of entry is Reception, Year 1 or Year 2 and a school already has class sizes of 30. A child should only be admitted in such cases if they can be considered to be an excepted pupil.

Parental preference will initially determine where the request for admission is made. In accordance with the LA’s coordinated scheme for in year admissions parents applying for schools participating in the scheme will be required to complete an in year common application form and will be able to express up to three preferences for schools and rank them in order of preference. Parents will be invited to tell the LA about any circumstances that may lead the child to be considered under this Protocol. Where schools do not participate in the in year scheme, parents will need to apply to them directly for a place.

For schools participating in the local authority’s in year co-ordinated scheme, parents will be invited to share information about their child with the local authority if they think the child meets the fair access criteria. The LA will share information with schools as appropriate. If the school wants to make a Fair Access referral, they will have 5 school days to do this. If no referral is made and the school has a place, Student Services will offer the place and the school will admit the child.

If the school wishes to pursue a Fair Access referral they must notify the LA within 5 school days of receiving the information on the application form. The LA will then contact the parent and to invite them to put forward their own views and preferences. As much information as possible about the child will be gathered at this stage by the LA to inform the subsequent Pupil Referral Panel discussion.

Schools will be responsible for referring pupils to the LA under the Fair Access Protocol, but the decision as to whether to consider a pupil under the Protocol will be made by the Panel members advised by Local Authority Officers. Where it is decided that the pupil should not be considered under the Protocol s/he will be allocated a place under the standard admissions procedure by the admission authority or the LA acting on their behalf within the co-ordinated scheme.

Where the Panel considers the child meets the criteria a place will be allocated as a Fair Access admission, taking into account the following:

* parental preference (though there is no duty to comply with this)
* the views and recommendations of the Pupil Referral Panel
* the numbers on roll and vacancies at the preferred school or schools
* how many children have been placed at local schools as Fair Accessadmissions
* the practicality of any transport arrangements
* The particular circumstances of the school in question. An indicative list of issues to be considered by the Pupil Referral Panel when recommending a place for the child is included at Appendix 1.

The process will work as follows (see Appendix 2 for diagrams):

1. Where a school refers a pupil as fair access, they must complete a referral form and pass it to the Senior Officer, Schools Services within 5 school days of receiving the application (see Appendix 5).
2. Referrals may also be made directly by the Local Authority.
3. The panel will normally meet within 2 school weeks of the referral of the child as a Fair Access pupil. Decisions will be made according to information available at the time of the panel meeting.
4. The panel will determine whether or not the pupil meets the criteria for fair access. If they do not meet the criteria, the school will be expected to admit the pupil.
5. If the pupil does meet the fair access criteria, the panel will decide whether the school should admit the pupil.
6. If the panel agrees the referring school should not admit the pupil they will identify the most suitable school and any support to be offered to the school to support the proposed placement. A school can be asked to take a child even if there are no places available, subject to infant class size legislation.
7. Where it is considered that the pupil is not ready for mainstream schooling, they will be placed in an interim setting – see Appendix 4 for details.
8. Where a school has been identified for a Fair Access pupil, the Chair of the Pupil Referral Panel will contact the Head and the parent of the child. Where the Head and governors believe that they cannot meet the educational needs of the child or that they have a valid and exceptional reason for not accepting the child that has not already been considered by the Panel, they must respond within 5 school days giving their reasons in writing.
9. The Panel will then reconsider the placement and the LA will either approach an alternative school or seek to direct the school (for maintained schools) / ask the Secretary of State to intervene (for Academies).

**How the process will operate for Year 11 pupils**

Schools are often reluctant to admit pupils in Year 11 because of the difficulty of matching options. However, the School Admissions Code (2014) is clear that Admission Authorities must not refuse to admit a child solely because they followed a different curriculum at their previous school. If a Year 11 pupil meets any of the Fair Access criteria they will be subject to the same process as any other Fair Access pupil.

## Monitoring arrangements

* The LA will retain a record of every Fair Access pupil admitted and will make this record available to schools on a half-termly basis. The LA will use this record as the basis of any data returns requested by government.
* The Fair Access process will be reviewed by the Senior Officer, Schools Services and Head of Service for Vulnerable Pupils on an annual basis and updated as necessary. Any significant changes will be subject to consultation. Schools may also request a review if they think the protocol is not working effectively.

**Definition of Challenging Behaviour**

Each case thought to present challenging behaviour will be considered on individual circumstances by the Head of Service for Vulnerable Pupils (or other nominated officer within those teams). Challenging behaviour will normally be defined as:

* Where the child has attended two or more schools (in a key stage) without a change of address;
* Criminal behaviour resulting in a conviction or a police caution that could impact on the school within the previous two years preceding the request for a school place;
* Behaviour resulting in a permanent exclusion or managed transfer (i.e. in accordance with the Torbay managed transfer protocol) within the last two years preceding the request for a school place;
* Children at significant risk of permanent exclusion where the school can evidence that the child has met the threshold for behaviour at Level 3 (as defined in Torbay’s SEND guidance) within the last 12 months and where there has been a significant number of fixed term exclusions (10 days in one term).

Children with attendance problems, or those for whom English is an additional language will not, as a result of these problems alone be considered ‘challenging’ under the Fair Access Protocol. Where a school has behaviour issues within the Ofsted framework e.g. where a school is required to improve behaviour and attendance/behaviour and attitudes, a child with behaviour and attendance issues might be seen as challenging for that school.

**APPENDIX 1**

**FACTORS FOR PUPIL REFERRAL PANEL TO CONSIDER WHEN DECIDING ON A RECOMMENDED PLACEMENT FOR A FAIR ACCESS PUPIL will include**

* Parental preference
* Numbers on roll and vacancies at local schools
* Previous placements of Fair Access pupils at local schools
* Transport arrangements and reasonable travelling distance/time
* The circumstances within local schools:
  + Other children in the year group/school with challenging behaviour
  + Performance issues at the school
  + Staffing issues e.g. class teacher on probation; staff on long-term sick-leave etc.
* Additional support that would be needed and how this could be provided

**APPENDIX 2a**

**FAIR ACCESS PROTOCOL FOR LA**

Parent applies for school place

Place available

No place available

Application refused

Place offered. Child is not a Fair Access pupil

School/LA identifies that child has challenging behaviour/issues as identified by FAP

School can meet child’s needs

School has many challenging children and/or will have difficulty meeting child’s needs within that Year Group

School refers application to LA under FAP and supplies supporting information within 5 days

PRP reviews and decides best school to place child bearing in mind conditions at school and previously placed FA pupils

LA asks school to take child on behalf of the panel

School may make representation under the protocol as above

LA consults School and child’s parents

School has right to appeal to adjudicator

ADCS may decide to direct and informs school

LA places child in interim setting

Parent has right to appeal

School accepts child

No suitable school place can be agreed within 2 weeks

LA decides on most suitable school

Maintained School

Academy

ADCS (Education, Skills and Learning) decides on placement and approaches the Secretary of State for a direction to a school to take on roll.

Criteria not met

Criteria met. Child becomes FA pupil

**APPENDIX 2b**

**FAIR ACCESS REFERRAL PROCESS FOR SCHOOLS**

Parent applies for school place

Place available

No place available

School identifies that child has challenging behaviour/issues as identified by FAP

Application refused

School can meet child’s needs

Place offered. Child is not a Fair Access Pupil

School has many challenging children and/or will have difficulty in meeting child’s needs within that year group

Parent has right to appeal

School refers application to LA under FAP and supplies supporting information & reasons

LA decides whether pupil should be counted as Fair Access

Yes

No

Application processed under Fair Access Protocol

Application treated as normal in-year application

**APPENDIX 2c**

**FAIR ACCESS PLACEMENT PROCESS FOR SCHOOLS**

Fair Access Pupil considered by Pupil Referral Panel

LA asks school to take child

School accepts child

School tells LA they can’t meet child’s needs and gives reasons

No suitable school within reasonable distance is willing to accept child

LA decides on most suitable school

Academy

Maintained School

ADCS asks Secretary of State to intervene

LA consults school and child’s parents

ADCS decides to direct and informs school

School has right to appeal to adjudicator

**APPENDIX 3**

**PUPIL REFERRAL PANEL**

**TERMS OF REFERENCE**

**PURPOSE**

To ensure that every child receives an educational entitlement that meets their needs and enables them to fulfil their potential by:

* acting as gatekeepers to centralised alternative provision
* identifying suitable placements for Fair Access pupils and other vulnerable pupils
* monitoring progress of pupils in interim provision towards placement in mainstream settings
* ensuring that vulnerable pupils are kept safe by being placed in an education setting with minimal delay
* safeguarding pupils by alerting other agencies where appropriate

**MEMBERSHIP**

Representative from Primary Strategy Group

Representative from each of two Secondary Groups

Representative from the Local Authority (Chair)

Representative from Alternative Providers

**TIMING AND FREQUENCY OF MEETINGS**

Meetings will take place two-weekly during term time on a Wednesday morning. Student Services will provide a note taker for meetings.

**PROCESS**

a) Requests for alternative provision (secondary)

* Requests received from schools (behaviour referral form required)
* Panel considers requests and
  + Panel allocates places at Burton Academy for intervention programme or
  + Panel makes recommendations and suggestions re alternative sources of support if unable to allocate or if inappropriate to allocate or
  + Panel requests additional evidence or actions before reconsidering referral
  + Panel agrees intervention programme
  + Panel agrees reintegration to mainstream school/scrutinises reasons for delay in returning to mainstream school

b) Requests for alternative provision (primary)

* Requests received from schools (referral form required)
* Panel considers requests and
  + Panel allocates places at Mayfield School Chestnut provision or
  + Panel makes recommendations and suggestions re alternative sources of support if unable to allocate or if inappropriate to allocate or
  + Panel requests additional evidence or actions before reconsidering referral
* Panel monitors until pupil either goes on roll at Chestnut/other alternative provision or reintegrates to mainstream

c) Requests for Medical Tuition Service provision

* Requests received from schools (referral form and supporting evidence [hospital consultant/CAMHS] required)
* Panel considers requests and
  + Panel considers whether multi-agency meeting required and/or
  + Panel allocates places with Medical Tuition Service or
  + Panel makes recommendations and suggestions re alternative sources of support if unable to allocate or if inappropriate to allocate

d) Fair Access referrals

* Referrals received from schools (referral form required)
* Panel decides if fair access criteria met and whether preferred school should admit pupil
* If not, panel decides most suitable placement
* LA contacts Head and parent.
* Panel reconsiders if school claims not to be able to meet child’s needs
* LA approaches alternative school/directs/contacts Secretary of State

f) Other vulnerable pupils

* Panel considers school placements for other vulnerable pupils who do not meet fair access criteria but have not secured a school place, including pupils who have been permanently excluded and pupils who are in unsatisfactory Elective Home Education provision.

g) Managed moves

* Panel monitors managed moves once a receiving school has been identified and until the end of the trial period

h) Permanent exclusions

* Panel ensures alternative provision is in place or agrees managed move to another mainstream school
* Panel monitors progress until managed move complete, or monitors intervention at alternative provision as in a) above

Outcomes

* Support allocated to those most in need
* ‘At risk’ pupils known about
* support in place for these pupils
* progress of pupils can be monitored
* early alerts likely for pupils to be permanently excluded
* Hard to place pupils are placed in schools on an equitable basis
* Pupils in interim settings are reintegrated into mainstream schools as rapidly as possible
* Pupils are in the correct provision to meet their needs

**APPENDIX 4**

**INTERIM PROVISION**

**Support and alternative provision for Primary Schools**

Chestnut, which is part of Mayfield School, is the principal centre for support for primary schools in managing children whose primary need is behaviour. The centre currently delivers the majority of this support in schools and has a number of staff who make up a dedicated outreach team.

Schools should have met levels 1-3 of the behaviour thresholds before making a referral. Requests for outreach and intensive outreach support do not need to go to the Pupil Referral Panel as they can be made directly to Chestnut.

Chestnut will provide/arrange interim tuition for pupils who have been permanently excluded from a primary school until such time as they are ready for re-integration into a mainstream school. In the event of a school permanently excluding a child they should inform both the Head of Vulnerable Pupils and Chestnut immediately so that provision can be put in place within the statutory time frame of 6 days.

Pupils on roll at Chestnut who are ready to be reintegrated into a mainstream school will be placed via Torbay’s Managed Move Protocol.

Schools can, of course, seek alternative provision from a range of independent providers should they wish to.

Schools can also buy additional support from the Educational Psychology Service. This service will help schools to manage children who have social, emotional or behavioural difficulties.

**Support and alternative provision for Secondary Schools**

There are a number of providers, locally, who are able to offer support to schools in managing young people who are not able to manage in a mainstream school setting. The Local Authority commissioned provision includes Burton Academy and Torbay’s Medical Tuition Service (MTS).

Currently the Medical Tuition Service has responsibility for two groups of children and young people:-

1. School Phobics
2. Children who require medical tuition

Evidence must be supplied to support referrals. This must be a referral from CAMHS or from a hospital consultant stating that a pupil is unable to attend school. Where a student has complex needs the Panel may request that a multi-agency meeting is held before Medical Tuition Service provision is agreed. This is to ensure that every student is placed in the most appropriate setting and that staff have full information to enable them to support the student.

Burton Academy will take young people at risk of permanent exclusion for up to twelve weeks to assess their learning needs and make appropriate interventions. Schools should have met levels 1-3 of the behaviour thresholds before making a referral. As agreed in the 2018 High Needs Block consultation assessment places will be subject to a charge of £6,500 for a 12 week intervention.

Burton Academy will provide interim tuition for pupils who have been permanently excluded from a secondary school until such time as they are ready for re-integration into a mainstream school. In the event of a school permanently excluding a child or young person, they should inform both the Head of Vulnerable Pupils and Burton Academy immediately so that provision can be put in place within the statutory time frame of 6 days. Wherever possible, a managed move to other mainstream provision will be arranged.

Referrals for places at the Medical Tuition Service, Chestnut or Burton Academy will be made via the pupil referral panel which meets fortnightly. Referral forms should be sent to [prp@torbay.gov.uk](mailto:prp@torbay.gov.uk) . Before a referral is made the pupil should be discussed at the relevant peer challenge group.

There are some children and young people who may not meet the criteria for any of the Local Authority provision. Staff at the Medical Tuition Service, Chestnut or Burton Academy will work with schools to help them put together programmes of support for these children and to find alternative appropriate alternative provision where required. The cost of this will be borne by the schools.

Appendix 5

**APPENDIX 5 - FAIR ACCESS REFERRAL FORM**

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|  |  |  |  |
| --- | --- | --- | --- |
| **School making referral** |  | | |
| **Pupil name** |  | | |
| **Pupil address** |  | | |
| **DOB** |  | **NCY** |  |
| **Reason for changing school** |  | | |

I am referring this pupil to Torbay Council as a Fair Access pupil. The pupil meets the following fair access criteria *(please indicate as appropriate):*

|  |  |
| --- | --- |
| **Torbay Fair Access Criteria** | **X** |
| Children from the criminal justice system or PRUs/alternative provision who need to be reintegrated into mainstream education |  |
| Children who have been out of education for two months or more\* |  |
| Children of Gypsies, Roma, Travellers, refugees and asylum seekers |  |
| Children who are homeless (including children living in refuges) |  |
| Children with unsupportive family backgrounds for whom a place has not been sought |  |
| Children who are carers |  |
| Children with SEN, disabilities or medical conditions (but without a Statement) |  |
| Children with a child protection plan in place |  |
| Children who were permanently excluded from their last maintained school placement and who are ready for re-integration to an alternative school |  |
| Children returning to school following a period of unsuccessful elective home education |  |
| Children of Service Personnel resettling into the area immediately on discharge |  |
| Children whose parents have been unable to find them a place within statutory walking distance after moving to the area, because of a shortage of places and where normal admission processes have been unsuccessful |  |
| Children who have been refused a place at a school because they are believed by the school concerned to be challenging |  |

*\* Provided the parents can demonstrate that, during the required period, they were actively seeking a school place and that they were living in the UK.*

**Information about your school *(Secondary schools – please read ‘class’ as year group)***

|  |  |
| --- | --- |
| No. in year group |  |
| How year group is organised |  |
| No. in class this pupil would join |  |
| No. of EHCPs in class |  |
| No. of SEND support in class |  |
| No. of EAL in class |  |
| Support available in the class |  |
| Additional information about this year group |  |

**Information about the pupil**

|  |
| --- |
| What is it specifically about this child that means your school could not meet their needs but another school could? |
|  |
| What changes could you make to enable you to admit this child? |
|  |
| Please give any further information you would like the Panel to take into account |
|  |

|  |  |
| --- | --- |
| **NAME** |  |
| **ROLE** |  |
| **DATE** |  |

***Please e-mail this form to*** [***prp@torbay.gov.uk***](mailto:prp@torbay.gov.uk)