

Cabinet

11 July 2019

Warwickshire County Council Fair Access Protocol for Mainstream Primary & Secondary Schools

Recommendation

That Cabinet agrees the new Warwickshire County Council Fair Access Protocol for Mainstream Primary and Secondary Schools as set out in Appendix B.

1.0 Key Issues

- 1.1 Each local authority must have a Fair Access Protocol (FAP), agreed with the majority of schools in its area, in which all schools including Academies must participate. The purpose of the FAP is to ensure that – outside the normal admissions round – unplaced children, especially the most vulnerable, are offered a school place as quickly as possible, so that the amount of time any child is out of school is kept to a minimum. 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.

2.0 The Proposals

- 2.1 The current Secondary Fair Access protocol was updated and consulted on last year and 33 out of 36 Secondary Schools were in favour of its implementation. Following agreement at Cabinet on 14th June 2018 this protocol was adopted as of 1st September 2018. The current Primary Fair Access Protocol has been in use since September 2017 and was due to be updated as the Memorandum of Understanding (MOU) formed a large part of the Primary Fair Access Protocol and this will not continue from the end of this academic year.

Secondary

- 2.2 The changes to the part of the Fair Access Protocol which covers Secondary Schools are minimal compared to the changes to the Primary Fair Access section, as several changes were made last year. There are some wording changes to provide more clarity in the context and overview sections of the document in addition to more robust changes as follows:

- 2.2.1 The placing of children without a school place, who fall under the Fair Access Protocol, now takes place at the Area Behaviour Partnership (ABP) Meetings which are held every 4/5 weeks across the County.

The panels now include other agencies i.e. Warwickshire Youth Justice Service (WYJS), Early Help and Education Psychology (EPS) as well as a member of each schools Senior Leadership Team (SLT) and colleagues from Admissions and Children Missing Education. Paperwork is sent out to all schools, securely, 5 days in advance of the meeting so that schools can familiarise themselves with the details of the children needing a school place ahead of the meeting and then placements can be made at the panel meeting to the most appropriate school, using the database for guidance.

2.2.2 Children are placed on the roll of that school within 5 school days, even if a phased reintegration programme has been agreed, keeping the time a child is without a school place to a minimum.

2.2.3 Warwickshire County Councils criteria i), j), k) and l) have been reworded to emphasise that these apply to **Unplaced** children only, which is defined as - any child who is not on a school roll or is on a school roll but no longer resident within a 'reasonable travelling distance of that school (reasonable distance is determined by Warwickshire County Council). The wording is also more specific regarding WCC needing documented evidence if these criteria are being used to refuse a school place to a child.

2.2.4 The additional list of categories of children who could not be refused a school place under the FAP, but where their admission to school would gain the school points towards FAP allocations, (which was introduced in the last protocol update) remains in place. This has proved a robust way of ensuring these children are taken quickly into schools and not disadvantaged by having to go through the FAP process. This includes Year 11's, children previously Home Educated and children securing places through the managed move process.

2.2.5 The managed move process has its own protocol so they do not get placed through the FAP. However, points are awarded for successful managed moves to acknowledge these children have been placed.

2.3 The points system remains in place as a way of noting students placed within each Secondary School across the County and information on the current status of the database with points and rankings is sent out along with the paperwork for the children who are to be placed via each ABP panel. The points system will continue to be reviewed annually and takes into account the following information for all schools;

- Geo-demographic Factor (now based on Free School Meals data)
- Pupils whose Home Language is not English
- SEN
- Mobility
- Prior Attainment
- Size of School

The points system enables the Local Authority to use this as a guide in identifying the most appropriate school, thereby ensuring no school is asked to accept a disproportionate amount of pupils with challenging behaviour,

even if places are available. The points system is designed to enable the placement into schools facing less challenge, in terms of general poor behaviour of pupils.

- 2.4 For any school to refuse to accept a pupil via the protocol, they must fully demonstrate why their school is not able to support the placement. Furthermore, they must be able to demonstrate they have a higher than average number of challenging pupils on roll, and that the placement of the pupil will significantly affect the efficient and effective use of resources. We have added an Exceptional School Circumstances Submission form which, if validated by the Local Authority, would give exemption to a school in one or more year groups from taking a Fair Access child for a period of up to 12 weeks.
- Primary
- 2.5 The changes to the part of the Fair Access Protocol which covers Primary Schools are more significant and aims to replicate the secondary panel model. This will align both panels to cover the placement of all school aged children across all areas and key stages.
- 2.6 The Primary Assessment Gateway Panel will be introduced from September 2019 and will meet monthly. Due to the number of Primary Schools it will not be possible to have a member from each school in the area present at each meeting. Discussions are underway with the Local Area Analysis Group Chairs as to the exact make-up of the panels, but they will include colleagues from Admissions, Children Missing Education, Early Help, Warwickshire Youth Justice Service and potentially SENDAR and other agencies as needed.
- 2.7 Paperwork will be circulated, securely, prior to the meetings taking place to at least the six closest schools in any one area taking into account the child's home address and a range of other factors. Currently children are placed only at the next closest school. This has become unworkable due to the numbers of children needing to be placed, primarily through permanent exclusion.
- 2.8 The Exceptional School Circumstances Submission form can be completed by schools, which if verified by Local Authority Officers, would give exemption to a school in one or more year groups from taking a Fair Access child for a period of up to 12 weeks.
- 2.9 Again, due to the number of Primary Schools, it will not be possible to administer a database in the same way as we do for Secondary Schools, however, scoring grids and spreadsheets will be kept to denote where children have been placed in order to advise on future placements as the academic year progresses. This information will be shared amongst all Primary schools following each panel, to ensure transparency and fairness for all.

3.0 Consultation

- 3.1 Prior to the consultation being sent to all mainstream State Funded Primary and Secondary School Headteachers in Warwickshire, a revised draft protocol was produced with input from the Lead Officer for Fair Access and WCC Legal Team and shared with the ABP Steering Group (a group of 10 Primary and Secondary Headteachers from across the County). Meetings have been held with this Steering Group on 7th February, 28th March and 16th May 2019 to consider the draft Fair Access Protocol and gain an update on the consultation.
- 3.2 Feedback from this group was considered by the Admissions and Legal teams and changes made as appropriate. Agreement was sought from Councillor Hayfield and permission given for a Consultation process to begin. The updated Draft Fair Access Protocol for Primary and Secondary Schools was emailed out to all Headteachers Thursday 2nd May 2019 for consultation advising that the consultation would run until Friday 7th June 2019. Due to time constraints there was insufficient time to go back out to consultation following feedback, however, all feedback was discussed again with the Lead Officer for Fair Access and the Legal Team and further responses sent directly to Headteachers.
- 3.3 At the close of the consultation 157 out of 230 (68%) of Primary and Secondary schools provided a response to the proposed protocol. Of these, 144 (92%) of schools that responded, said 'Yes' to the statement 'Do you agree to the implementation of this Fair Access Protocol for September 2019?' with 13 (8%) of those who responded, replying 'no'. This means that 63% of all schools supported implementation of this Fair Access Protocol, with 5% disagreeing with it and 32% not responding.
- 3.4 The statutory guidance requires that the Protocol is agreed with the majority of relevant schools in the County. It is clear from the responses received during the consultation, that the majority of mainstream Primary and Secondary Schools are content with the proposed protocol.
- 3.6 Comments received from schools through the consultation process are attached in Appendix A along with Local Authority responses (in red).

4.0 Financial Implications

- 4.1 There are not expected to be any cost implications as a result of introducing the Joint Primary and Secondary Fair Access Protocol beyond those already planned for within the Education Services budget. This will be kept under review. The Fair Access Protocol is designed to access mainstream education where appropriate, however, if a child initially requires a period of time in Alternative Provision this will be organised through the ABP and monitored. At an appropriate point children will then be referred back to the panels for placement into a school.

5.0 Summary

- 5.1 The Local Authority has a statutory duty to provide a Fair Access Protocol. The consultation indicates the majority of schools agree with the principles of the new proposed protocol. The requirement for transparency whilst ensuring pupils are not out of school for long periods continues to be addressed by the proposed protocol.

6.0 Timescales Associated with Next Steps

- 6.1 If Cabinet approve the document, full implementation will commence in September 2019 at the start of the new academic year 2019/20.

Background papers

None.

Appendices

Appendix A – Consultation responses

Appendix B – Fair Access Protocol for Mainstream Primary & Secondary Schools

Appendix C – Equality Impact Assessment/Analysis (EqIA)

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The report was circulated to the following members prior to publication:

Elected Member(s):

Councillors Hayfield, Williams, C.Davies, Roodhouse, Dahmash, Chattaway, Morgan and Chilvers.

Appendix A: Fair Access Protocol Primary & Secondary Schools Consultation – Comments, Queries and Concerns.

Comments from each Headteacher, or school representative below have been taken directly from the consultation feedback forms. WCC Responses are in red.

I was not sure whether to put 'yes' or 'no' as I understand the reasons why a protocol needs to be in place. I am particularly worried about violent/aggressive children being placed as part of FAP. I think schools need to be able to decide on an individual basis about whether violent/aggressive children are best placed in their school, without being judged. It sometimes feels so faceless when we are approached via email/letter. Parents often have not been to see if the school meets the needs of their children. The flow chart makes it sound really officious. When headteachers 'refuse' to take children it takes a lot of soul searching. Schools have to balance teacher wellbeing/retention/recruitment with the needs and lived experience of existing children in their setting. If there was some financial support guaranteed to help toward support of children in school then this may help schools to feel secure that they can meet the needs of the child.

We held an extraordinary meeting of the Chairs of the Primary Consortia this morning to go through the background and logistics of this protocol in more detail so that they can cascade the message back to their Consortia. Could you have a discussion with one of them to find out more detail about what was discussed today, as there was a lot more detail than we have been able to put into the actual protocol. I would be more than happy to have further discussions with you once you have caught up with your colleagues if you still have concerns.

I had a conversation via email with Cheryl from the team who put my mind at rest that lots of discussion had been had prior to sending out the protocol. I feel heard. Thank you.

Clarity with the process is key for the implementation and for its success. I'm sure there will be some cases that will not fall into this agreement, but there does seem to be some room for these to be discussed and agreed.

Further meetings are planned to discuss the Assessment Gateway and make-up of the panel. Details of decisions made will be shared with all Headteachers prior to September 2019.

I believe there has to be further developments in the transparency of which schools have been approached and which schools have taken pupils on to their roll. As part of the working group that wrote the current protocol, we were most keen for there to be a transparency between all schools, so that the protocol could seem to be fair. Unfortunately this has not happened. This means at present there are continual whispers that "this or that" school has wriggled out of taking any pupils, while other local schools have taken several pupils in a school year. A simple termly report emailed to all schools would solve the perception that the Fair Access Protocol is not always fair!

Agreed and points noted. As discussed in previous emails we have taken on board your comments about transparency and of course, using the panels as detailed, we will be able to disseminate that information at each panel (monthly) and so there will be the transparency needed. We held an extraordinary meeting of the Chairs of the Consortia this morning. Could you have a conversation with your representative regarding the wider picture which was shared this morning as it contained much more about the process than we have been able to include in the actual protocol and I think will help to alleviate some of your concerns.

I have two concerns: Code g. Firstly I would like to note the paragraph 6.32 of the SEN code of practice: 'Children and young people may experience a wide range of social and emotional difficulties which manifest themselves in many ways. These may include becoming withdrawn or isolated, as well as displaying challenging, disruptive or disturbing behaviour. These behaviours may reflect underlying mental health difficulties such as anxiety or depression, self-harming, substance misuse, eating disorders or physical symptoms that are medically unexplained. Other children and young people may have disorders such as attention deficit disorder, attention deficit hyperactive disorder or attachment disorder.' and additionally, page 11 of the draft document under discussion here which states: 'where an admission authority does not wish to admit a pupil with challenging behaviour outside the normal admissions round, even though places are available, it can refuse to admit the child if the FAP protocol applies. The results of these criteria is that if a school has not recognised that a child's poor behaviour is linked to an undiagnosed SEMH need and placed them on the register and started to work proactively with the child and the family then the child cannot be refused under G on the grounds that they are not on the SEN register. This means that if a school is not inclined to work proactively with students with behaviour issues or considers that the issues are not related to SEN then the student cannot be refused by another

school despite the fact that the issue may be to do with unmet SEN need. This may incline schools to not attempt to meet need as placing the child on the SEN register means that they can be refused under FAP, whereas ignoring the need and not placing them on the register means that they cannot be refused and the school benefits as they then move on to another school. This threatens to seriously disadvantage inclusive schools who work hard to recognise and diagnose need. The final point I would like to make regarding this also relates to the statement from the draft protocol where it says that turn down 'will only normally be appropriate where a school has a particularly high proportion of children with challenging behaviour...'. The way this is written implies that it is possible to refuse even if a FAP code does not apply as long as the child has challenging behaviour. This is despite the fact that the previous sentence says 'can refuse to admit the child if the Fair Access Protocol applies' which implies turn down is only possible if FAP is met. This is confusing and I think needs clarification. Codes i,j,k and l. I am concerned about the use of the word 'unplaced' in these definitions. The inclusion of the word 'unplaced' means that students who exhibit these behaviours and are on a school roll can move around the system from one school to another with ease whilst students who do not have a place can be refused under FAP and kept out of education. I think the use of 'unplaced' was to deter parents from taking children off roll so that they can then apply to another school but in preventing this behaviour you then leave schools vulnerable to parents moving challenging students across the system with schools having no ability to refuse as they are on roll. We regularly receive applications for students with low attendance and /or with behaviour logs that show persistently challenging behaviour but are now unable to refuse under FAP as they are 'on roll' somewhere and therefore not 'unplaced'.

A meeting was held with the Headteacher to go through these concerns in more detail. The word 'unplaced' has to be in the protocol as Fair Access only applies to pupils if they are not on a school roll. There is a robust Managed Move process in place which should be used for the movement of children already on a school roll but exhibiting challenging behaviour. Although managed moves don't go through the protocol, points are awarded in recognition of schools accepting these children if the managed move has been successful. We have clarified the wording around when schools can legitimately refuse a school place and the process around that, but clearly stating that this still enables parents to appeal against the refusal if they wish to.

Though I still have concerns about aspects of the protocol, I appreciate having had the opportunity to talk these through. I do understand that the legal position around admissions makes it difficult to set up the protocol and trying to please everyone is extremely hard!

On the whole I like the draft document, just a couple of questions:- Under Section 2 - point viii - it states 'if they have a higher percentage' - do you have a numerical value to this?

There is not currently a numerical value placed on this point, it will be done on a school by school basis depending on the current circumstances. We will add this for discussion at the Assessment Gateway panel planning meeting to see if this can be clarified further.

In Section 3 - point iv - it talks about school support - what will this support entail and with diminishing financial budgets how will this support be funded?

Every available source of funding and support is being sought, but no firm details are available at this point. This will form part of the further Assessment Gateway meetings and will be fed back to schools prior to September 2019.

In Section 6 - point ii - Will there be different heads in different regions as the heads of Bedworth do not understand the issues in Rugby etc....

The detail of the make-up of the panel is still in discussion and will form part of the ongoing Assessment Gateway meetings and be fed back to schools prior to September 2019.

My only concern is getting professionals outside of education to attend the FAP Panels regularly (e.g. health, CAMHS etc). I think it would also be beneficial to include FAP information in Headteacher induction meetings.

We have been successful in getting other professionals to attend the Secondary ABP meetings for the last few panels and we anticipate this will continue for the Primary Assessment Gateway also. We will pass your second point on to the team who facilitate the Headteacher induction meetings.

I agree with the protocol in general but I'd make the following comment: Para 2 iv - this is very unclear. It appears to be saying that schools can't cite oversubscription (in other words the fact that they are full) as a reason for not taking FAP pupils but can refuse to accept FAP pupils if they are full (which only happens when they are oversubscribed). The code, 2.14 (cited in this paragraph) simply says: "those allocated a place at the school in accordance with a Fair Access Protocol, must take precedence over those on a waiting list" It doesn't say anything about a school being full. I'd suggest, therefore, that references to schools not being able to turn down transfers under FAP because they are full are removed from this paragraph. I'm happy to be corrected, but I can't see

anything in the code that says schools have to take above PAN just because a child is under FAP; the code merely says that such pupils would take precedence over others on the waiting list. There is a list of reasons which may not be used to refuse a place (Code para 2.9) but being full is not one of those reasons.

Agreed. We have deleted part of the paragraph so that it reads more clearly.

Para 7 ii - Sub-paragraph iv notes that it is the responsibility of the School Admissions team to compile information to support the ABP in deciding which school will admit which pupil. Sub-paragraph ii says that "no case can be deferred for discussion..." However, to be fair to schools, I'd suggest that there is a caveat added to sub-para ii to the effect that "no case can be deferred for discussion...except where sufficient information has not been available to the ABP to allow a decision to be made."

We have a commitment to ensure that the information is correct and available prior to the placement of children at panels. This will be robustly adhered to so that decisions can be made on the day at panel thus ensuring there is no further delay to a child being placed on roll.

Paragraph 9 - It would be useful to make this paragraph clearer. The paragraph states that the process operates independently of FAP which implies that points aren't awarded; however Chart 2 on Page 9 makes it clear that points are awarded for taking managed move pupils. It's not a problem but it could be clearer.

Agreed – we have added the following paragraph - Points are awarded (see Chart 2) to acknowledge support of schools with vulnerable children needing to change schools.

Ensure support for pupil/school during transition and post entry to school

Noted.

I would like to request that something is added with regard to support, and where the support would come from, for transition for a child into the receiving school and also support for the child once in their new school to make the move as successful as it could possibly be.

Noted – Further discussion on the logistics of the panels and support and funding will be addressed in future meetings to discuss the Assessment Gateway. This will be reported back to Headteachers prior to September 2019.

Whilst working in Coventry, they introduced a system of asking all school's to indicate at least one year group that they considered would have the capacity to take a child through FAP. This allowed Headteacher's and governors to make informed decisions and to consider the needs of all the pupils. Making informed decisions based on their unique knowledge and understanding of the own school which in turn would lead to better transitions for these vulnerable pupils and minimize impact on current pupils.

Thank you for this insight, we will put this forward to the Assessment Gateway panel meeting discussion.

Representation of the head teachers on the panel needs to ensure that all types of school are represented. They should be from all areas of the county and represent large and small school and those that have split sites. I believe that it is very important to have all different types of school represented by the panel. Preferable one member of each consortium to attend so that schools are represented fairly.

This will be discussed further at the Assessment Gateway panel meeting discussions and responses will be fed back to Headteachers prior to September 2019.

Clarification on 7ii and 8ii as they discuss timescales for children to be placed on roll at school. 7 ii sites 5 days and 8ii sites 7 days.

This has been rectified in the protocol – it is 5 school days on both now.

All agencies eg Admissions, SENDAR, Virtual School, Sustainability teams need to have shared intelligence of pupil numbers, current SEND, numbers in year groups and numbers of looked after children. Also financial restrictions meaning smaller school impact of having to front load with the first £6000 for SEND.

Meetings have been held and further discussion will take place during the summer holidays with the Insight Team to look at how we will pull through the information needed so that we know the make-up of each school, in order to make informed decisions at the Assessment Gateway panel meetings.

Headteacher representation on the panel is an important feature of the new protocol. I would like to know how panel members are chosen and would like reassurance of representation from our consortium where placement in one of our schools is being discussed. The needs of different types of primary schools vary considerably and it is essential that this is understood when making decisions regarding the placement of vulnerable children as any new school placement we would hope to be successful. Representation from the consortium would assist with this and if required, I

would be happy to be involved. In addition, there needs to be an improvement in information systems regarding admissions to schools to give a clearer picture of individual schools. So many departments / agencies are involved in placing vulnerable children, in addition to the FAP team. A database to show placements through FAP, SENDAR, virtual school, cross border, STS (eg managed move), and ideally SEN make-up etc etc would help to give a clearer picture when deciding on which school to approach.

The details of the logistics of the panels are still being worked on and decisions will be fed back to Headteachers prior to September 2019. All comments received through the consultation will be taken into account. Link work is being developed between Admissions and SENDAR so that we all know which schools are being approached at any one time.

I agree that the policy has to change as the current policy is not leading to success for the children who are placed, or for children currently in the schools these children are being placed into. I would also like to point out that as a head I believe in inclusion, giving children a chance to succeed where it has previously failed for whatever the reason. The problem is there just simply isn't the financial support to make it work. This results in the vulnerable children currently on role failing too as resources just won't stretch to accommodate the complex needs these children present. It isn't the fact we don't want to solve this issue, it's the fact we can't solve it without financial support. I have a number of concerns with the FAP 1 8 i) specifies that an admission should not be delayed in order for SEND assessment to take place. I think there are some circumstances where it is important that a pupil is not set up to fail in a placement, owing to the receiving school having insufficient assessment and guidance about how best to meet the pupil's needs. Schools need to be FULLY aware of the challenging nature of a pupil's behaviour and, if a delay to admission is needed for full evidence to be gathered and a proper support plan to be put in place, then the admission should be delayed.

8 i) is from the School Admissions Code (Section 3.13)

8 iv) outlines 3 reasons why a school might justifiably resist an admission under the FAP - I think the second one is either unclear, or questionable: does it mean that schools with a high rate of exclusions might be 'let off' an admission? If so, that seems to penalise inclusive schools which resist excluding pupils, and to potentially result in high excluding schools being treated with kid gloves.

The aim of this is to treat all schools equally, but schools will have to justify why they are refusing and the Local Authority will need to agree based on evidence.

9) Very supportive of the inclusion of a section on managed moves.

2 iv) is confusing and apparently contradictory, to my mind. Is 'over-subscription' and 'being full' a reason for seeking an exemption over an admission through the FAP or not? Elsewhere it seems to make it clear that the year group in question being up to PAN is NOT a reason for non-acceptance of a pupil under the FAP. This point seems a bit confused throughout the document, though I'm sure what their intention is.

Agreed – we have changed this point in the protocol and made it clearer.

Things that must be considered as part of the consideration of current schools context: 1. How much a school currently tolerates prior to excluded, this is hugely different across settings. 2. EP / STS , how much is being done prior to exclusion , some schools have a high level of support as they commit more of their budget to this . Others , its not a priority. 3. Children we currently hold onto until appropriate provision is found are at a disadvantage currently as the process takes so long and their are no places in the appropriate provision. Therefore excluding them is often a quicker way for the child to get what they required. There are schools that take this approach 4. Funding , there simply isn't enough higher needs, if this was addressed most of the children who are at risk of exclusion could be supported appropriately. The cost given to schools for each child with an EHCP is minimal compared to taxi costs and placement costs at special school . This si the frustrating issue . Many children wouldn't need special provision if the higher needs funding was addressed.

All feedback from the consultation will be considered and discussed as part of the ongoing discussions regarding the Assessment Gateway. This will be fed back to schools prior to September 2019.

I feel that the exemption time scale of just 12 weeks is too short- school circumstances are unlikely to change significantly in a term and would suggest a term for this. I also feel that the time allowed for members of the Fair Access and Gateway Panel to read and assimilate the papers prior to a panel hearing would need to be longer than 5 days

Points noted and will be fed back to the Assessment Gateway discussions. However, the exemption time has already been extended from 6 to 12 weeks.

Much better!

Pupils should be placed in the most appropriate school to meet their needs. Schools who are full should not be forced to take pupils, adding additional strain on already over stretched budgets, unless the school has been properly identified as the very best place for that pupil.

Under Fair Access oversubscription does not apply as children can be admitted over PAN. Clearly discussions will need to take place to ensure that the placement is the most appropriate for the child in question, regardless of whether it is a school which is full or has a space.

Lack of support for schools that have to take in children excluded from another school.

The proposed protocol has been formulated to ensure there is support for the vulnerable children needing to be placed through the Fair Access Protocol and that it is done through a fair and transparent process.

Additional support provided for identified children should be transferable with them to provide increased consistency.

We will add this to the discussion items for the Assessment Gateway.

Children should only enter into new schools with the support needed to ensure success. Moving children from one school to another without this support is damaging to them. If one school has felt the need to excluded - what will actually be different about the provision and expertise in the next school to ensure success for the child? When children have missed significant amounts of time in school - can provision be based on the child's needs. For example A child spending six weeks in year 6 after missing a number of years of education, will not have the skills needed to be successful in secondary school. Whilst money is tight - it is unfair that a child is repeatedly moved from setting to setting without addition support.

The majority of children being placed through the Fair Access Protocol in Primary have been permanently excluded and so must be found an alternative education setting. Through the Assessment Gateway Panel it is hoped that managed moves can be used to avoid permanent exclusion and that appropriate support will be sought and given to ensure successful placements. Further discussion will be had during meetings to discuss the logistics of the Assessment Gateway.

Having looked at the protocol there seems much to be positive about. Section D providing a list of interventions and outside agencies that should be exhausted before considering moving the child is a good step. However, this could be more explicit. This section should also reduce knee jerk responses or the we've tried everything but nothing works (when actually only scant adaptations have been made or limited external advice sought and implemented). Trial placement and early termination of the new placement is also positive. Rather than the historical approach of moving the child and then the home school using the 'washing their hands' approach. A thought would be to include a section on the home school meeting (some of?) the costs of the managed move- possibly to include staffing, professional advice(Ed. Psych)?

These points will be put forward for further discussion regarding the Assessment Gateway and how things will work.

ALL schools need to be approached rather than schools in more challenging areas as this seems to have been a bit of an issue historically with the same schools being approached time after time whilst others are rarely, if ever, approached. Schools need to be listened to about whether they can realistically provide the suitable care and learning opportunities for a named child, rather than it purely being an expectation that they can.

The Assessment Gateway Panels will provide this and the distribution of vulnerable children will be fairer and more transparent.

I believe it will be supportive of pupils and schools moving forwards

I do not agree with the following points: 7.ii 'No case can be referred for discussion with the head teacher...' as head teacher I reserve the right to make final decisions on such matters. The statement in 7. ii '...placed on role within five calendar days' would be better phrased as the process begun within five school days. Similarly, under section 8.vii there is reference to 7 calendar days, rather than school days.

We have a commitment to ensure that the information is correct and available prior to the placement of children at panels. This will be robustly adhered to so that decisions can be made on the day at panel thus ensuring there is no further delay to a child being placed on roll. The days have been changed to read 5 school days throughout.

Under section 11, school days are referenced, which seems more appropriate and should therefore be consistent across the document. Section 11 could be more cooperatively phrased as language of 'non-cooperation and 'escalated' actions is provocative; there are situations where

schools cannot operate with vulnerable families in such strict time frames, despite all best efforts, and this should not be represented as non-cooperation.

I am concerned at the overly prescriptive system for the secondary ABP as outlined in section 7. This approach has been controversial since its initial use, and head teachers find it unsatisfactory. Reasoned concerns have been expressed in previous meetings, yet these views have not been reflected in the protocol. ABP support has been reduced and the integration and support for vulnerable pupils has been passed directly to schools who do not have the staff to replicate work previously undertaken by the ABP. The combination of these cuts and the suggestion that schools have to accept the decision of a panel without reference to the head teacher result in non agreement with the proposed FAP.

We have noted your concerns, and we remain committed to working collaboratively with all schools to ensure the most appropriate placements continue to be made. Short timeframes for children to be on roll of a school once it is identified will ensure that children are not out of school for longer than is absolutely necessary.

For the protocol to be fair, county must publish the numbers of children excluded from each school together with the numbers of children taken by each school under FAP . In addition, headteachers need complete transparency about the spending by each school on services such as EP as this varies between institutions, which have vastly different thresholds for determining a PX.

We will be publishing this data through the Assessment Gateway Panels so that all schools are aware of the situation and it is fair and transparent.

I have long been in discussion with the LA about the exceptional financial and resource circumstance that my school is in. Therefore Governors and I have requested that these exceptional circumstances be taken into automatic consideration before my school is approved with children in more challenging circumstances.

Your comments have been noted.

Need a HT on the panel who have info on schools ahead of the panel meeting Longer term support from panel if things aren't going well Bedworth should not be included with Nuneaton; different needs Need a rep from each of five areas to ensure local knowledge of schools discussed. Could use CC as a base to pre-discuss schools being raised at panel Should be a weighting criteria for primary as there is for secondary Should consider putting funding into a school prior to exclusion; more cost effective. Need to consider those families who keep moving children due to 'fall-outs' with schools.

Noted, this will be fed back to the Assessment Gateway Panel discussions.

Although the new implementation has positive improvements there are still points that need addressing.

We are aware that work like this is ever evolving. We will be considering all the feedback received and monitoring progress.

At times, vulnerable children who are seeking places under IYFAP have additional needs which need support to be in place before they can attend a school. The time limit of placing a child on roll within 7 days if an additional adult is needed to support does not give schools the time to recruit or move staff. In addition time is needed to ensure that the classroom environment can be adapted if necessary and an integration plan can be agreed if needed.

Your point is noted and will be fed back, however we must ensure children are placed on roll as quickly as possible and a phased integration planned.

2.vii mentions pupils not suitable to attend mainstream school when 2 previous placements have broken down. Does this include managed moves ? It's not clear

In some cases this may include managed moves, but will be looked at case by case to account for all circumstances.

3.iv talks about securing a placement in alt provision but these pupils still need to be on the role of a school don't they ? That isn't mentioned.

This depends on which alternative provision the child is placed in.

p10 mentions the makeup of the ABP and we are not quite there yet; there really should be someone from SEND on the ABP - it's a big gap given that many of the students have SEN of one sort or another. However, this FAP provides a fairer, more transparent structure to ensure that all students and schools are treated appropriately.

Your point has been noted and will be discussed further at the ABP Steering Group. Link work is being developed between Admissions and SENDAR so that we all know which schools are being approached at any one time.

Whilst I accept that the current system requires review and that the proposed FAP is improved I feel that I am unable to accept due to the following points The primary review panel: the draft

proposal states that this panel will consist of 5 heads only, in a county as diverse as Warwickshire, a panel of only 5 heads can not be expected or be able to understand the situations of all schools, this is only likely to be achieved if there is a representative from each consortium on the panel. For example it is easily assumed that small schools are able to provide a nurturing environment for vulnerable pupils, however the reality of small schools is that many of the teachers already coordinate 3-4 subjects, are working without full times TAs and there may be little or no breakout space, additionally many heads within small schools function with DHT and also teach themselves. A headteacher from a multi form entry school in the north of the county is unlikely to understand this just as a head from a mixed age rural school in the South will not be likely to know the specifics of a school in Rugby or Bedworth. In addition the special circumstances exemption form should also include information relating to school building capacity, for example whether there are spare classrooms, breakout areas, whether there are any non teaching members of staff or whether the school has a DHT etc.. The ability of the school to also fit an additional pupil into a classroom should be taken into consideration.

Noted. Further discussions are to be held at the Assessment Gateway meetings as to how the panels will operate and who will sit on them, however, there will be opportunity for schools to feed into these panels.

Please give consideration to how the Fair access and assessment Gateway is set up, ensuring that all heads have opportunity to sit on the panel. Furthermore, that regional differences within the county are given consideration as to the heads that are sitting on the panel at the time.

Noted. Further discussions are being held and this will be fed back to Headteachers prior to September 2019.

Heads are struggling to get to meetings about this. They will be positive, but headteacher's conference is best time to get their attention

Mainstream schools should be able to reject a pupil if they consider they are unable to meet the pupil's needs or if they consider the pupil is like to have a negative impact on the learning or health and safety of other pupils. The local authority should then provide specialist provision to support such a pupil.

Through the Assessment Gateway Panel, robust triage of cases will ensure the most appropriate placement is sought for the vulnerable children who need to be placed.

Needs further consultation for time frames of admissions (7 days isn't enough to put in a plan and resources for a child with additional needs that has struggled in the past, why would changing a venue without support be the solution)

Noted. However, we must ensure that children are placed back into an appropriate educational setting in a timely manner to ensure they do not miss out on education. The protocol asks that they be put on roll within 5 school days even if a phased reintegration is planned.

I assume that in KS1 the limit of 30 per class still applies no matter what.

Yes, Infant Class Size (ICS) cannot be breached for Fair Access.

It is positive to hear that the FAP will follow a similar model to the one used by secondary schools which has resulted in a 50% reduction in permanent exclusions. It is positive that there will be five Head teachers (from AAG), Health, Social Services, Educational Psychologist (for advice), WCC officers, SENDAR and Mental Health represented on the panel. Thanks to Tammy Mason's support, MOU has worked very successfully during this academic year for a child at risk of permanent exclusion and I am concerned that the FAP wouldn't be able to offer the same level of support. We have children with an EHCP who, despite high levels of adult support, still remain at risk of exclusion. I have concerns over how the Fair Access Protocol will allow us to support these children.

Your concerns are noted and will be discussed at the meetings for the Assessment Gateway. Decisions will be fed back to Headteachers prior to September 2019.

We have discussed previously, taking into account the size of the school when looking to place via IYFAP and the numbers of students previously taken by a school. It was felt that larger schools should take a proportionally larger number. NASHCL members were in agreement with this proposal.

Your point is noted and will be fed back for further discussion. Meetings have taken place to further develop the database to capture this information.

Although not by any means the finished article, the current MOU is not meeting need and this needs to be looked at as a priority as too many children are slipping through the net. I agree to the implementation on the basis that the document is then held under scrutiny and amended to become more suitable and fit for purpose.

Your comments have been noted. This protocol and its processes will be monitored and will need to be reconsidered every year to ensure it is meeting the needs of the vulnerable children needing to be placed.

I am agreeing in the understanding that the Assessment gateway group mentioned in the FAP is adequately supported in its work and that the money to ensure support for the FAP children discussed by the assessment group is also granted.

Your comments have been noted and passed on for further discussion at the Assessment Gateway panel planning meetings.

This seems a clearer and fairer process

I am unsure of the inclusion of home educated children in the criteria listed on 5ii. I think some parents might take advantage of the system.

We do monitor this very carefully, so hopefully it won't cause an issue.

Schools that are full should not have to take additional children more specialist places should be made available for these children there are already too many children in the system who are waiting for or should be in a specialist provision.

Your comments have been noted and forwarded for discussion. However, with a lack of Specialist provision readily available we do need to seek appropriate education for these vulnerable children. The School Admission Code states that being over PAN cannot be used to avoid taking a child through Fair Access.

Many reasons, other local schools have lots of places spare and we are full with large waiting lists. Our school building is a stretch with the amount of children that we have e.g. hall, playgrounds, cloakrooms, parking etc. Our classrooms are very small and cannot take over number due to breach in size of classrooms.

Your comments are noted. All cases will be looked at as to the most appropriate setting for the particular vulnerable child. It is hoped that by working collaboratively we will achieve this, taking all information into consideration.

I support many of the statements made in the proposal, but I am very concerned about situations where classes would be oversubscribed, and there would not be enough funding to be able to support the child. For example, I have children in my school with challenging behaviour issues that require one to one support. There is no money in the school budget for this and despite the children's high level of need, they will not be able to get an EHCP. I am particularly concerned about the burden that this will place on teachers who may not have the specialised skills to work with vulnerable children, without the support of an extra adult.

We are aware of the difficulties some schools face and all avenues of funding and support are being explored.

The support for school is not in place to deliver the fair access protocol.

We fully agree with the Fair Access Protocol but feel that the support needs to be put in place by Warwickshire to ensure placements are successful and the children's needs can be met.

Noted. We are looking at every opportunity for support and funding to be in place to meet the needs of these vulnerable children to get them back into education.

We are concerned about the section that refers to students being taken on roll at a school when they will be in alternative provision full time (in effect being taken on roll although the school will never see them in lessons). It is felt that due to the fact that these students will not be taught in lessons at the school, their ability level should not be taken into account. We feel that Grammar schools should take a fair share of those students who are to be on roll but being educated in alternative provision - regardless of their student's ability. We believe this should be included in 2.ix. It is important the grammar schools play a fair part in this process as all schools should be similarly affected by the impact on their progress data. We feel that it is discriminatory to demand already vulnerable students, often facing challenging circumstances beyond their control, to take tests for which they are ill-prepared (not having had the benefit of preparation or external tuition for these assessments) before they take these students on roll. If they are to be compared to the cohort, then surely they must first benefit from tuition and support in the same way as the cohort does. Surely there must first be equity before we can expect all students to be treated equally? The same applies to schools. If the above is addressed we will support the protocol.

Your comments are noted. We do always look for opportunities for Grammar Schools to support vulnerable children. We have moved away from the scenario of children going on roll 'in name only' and so this shouldn't be applicable now, as children on a school roll will be attending unless they are put into alternative provision by the school they are on roll at.

I feel that it is better than what is in place now. However, it is very vague around exceptional circumstances and what that means?

Your comment is noted and will be passed on for further clarification. It is anticipated that the use of this form will not happen on a regular basis, but will be in exceptional circumstances and will need to be verified and agreed by the Local Authority robustly.

This is a positive move forward. It is far more fair and transparent.

I think more time is needed once an application has been made for the school to be able to find out information about the new child to ensure they are the most suitable destination and can meet the needs of the new child while continuing to meet the needs of the rest of the cohort, particularly where there may be significant challenging behaviour or Special Educational Need coming into a cohort that already has significant need.

Noted. It is anticipated that through the Assessment Gateway this information will be gathered and shared to enable suitable decisions to be made.

This is an improvement though I do feel that 'exceptional circumstances' is still rather vague and needs to be clarified.

This will be monitored robustly and will need to be agreed by the Local Authority based on strong evidence provided by a school.

3.iv) WCC will record the impact of the children placed through the protocol. Who will be responsible for this? How will the impact be measured? When placing pupils consideration must be given to the size of the school - the impact of a PEX pupil into a cohort of 100 is far greater than into a cohort of 200 for example. The P8 position of the school should also be considered re: the ability of the school to be able to absorb any historical underperformance of FAP pupils without significant impact upon key measures.

Your comments have been noted and will be fed back for further discussion and response. The introduction of the 'W' Code should help with some of your concerns. Meetings have been held regarding data gathering to provide more information for the database on school sizes.

More clarity around class size - What is defined large class size? In our school PAN is 70, so class sizes are 35 each. Would this be an exceptional circumstance?

It wouldn't necessarily be an exception unless there are other issues for the year group concerned. If a school is capable of handling a larger class size then this will be taken into account. Cases will be looked at individually and appropriate placements sought by working collaboratively.



DRAFT Warwickshire County Council Fair Access Protocol for Mainstream Primary and Secondary Schools 2019/2020

DRAFT PRIMARY/SECONDARY FAIR ACCESS PROTOCOL MAY 2019

**Issue Date: September 2019
Review Date: August 2020**

Index

Introduction	Page 3
Warwickshire context and statutory guidance	Page 3, 4 & 5
Overview and Aims of the Fair Access Protocol	Page 5 & 6
Exceptional Circumstances in Schools	Page 6
Who will the protocol cover?	Page 7 - 10
Operation of the Fair Access Protocol at Primary Phase	Page 10 & 11
Operation of the Fair Access Protocol at Secondary Phase	Page 11 & 12
Refusal to admit children and Direction to admit	Page 12 & 13
Managed Move Process	Page 13
Referral process from Schools to Panels	Page 13 & 14
Monitoring the Operation of the Protocol	Page 14
Protocol Review	Page 14
Appendix A – Exceptional Circumstances	Page 15
Appendix B – In Year Admissions process	Page 16
Appendix C – Primary Fair Access process	Page 17
Appendix D – Secondary Fair Access process	Page 18
Glossary	Page 19

1. Introduction

- i) The School Admissions Code 2014, issued under Section 84 of the School Standards and Framework Act 1998, requires each local authority to have in place a Fair Access Protocol (FAP) agreed with the majority of schools in its area. (SA Code 3.9). The requirement is supplemented by further advice from the Department for Education (DfE) in 'Fair Access Protocols: Principles and Process' published in November 2012. This sets out principles to clarify the expectations on all state funded mainstream schools (including academies and free schools) as well as all other admission authorities to ensure that FAP's operate effectively at a local level.
- ii) 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 seeks 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.
- iii) 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 for their child at any time, to any school outside the normal admissions round and is entitled to an appeal when a place is not offered, even if the reason for refusal is for FAP-related reasons.
- iv) 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.
- v) 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. (SA Code 3.14)

2. Warwickshire context and statutory guidance

- i) The Fair Access Protocol (FAP) for Warwickshire has been written in accordance with paragraphs 3.9 – 3.23 of the School Admissions Code 2014 and the DfE's departmental advice of November 2012 in partnership with the Area Behaviour Partnership (ABP) Steering Group, who review the process on a regular basis;
- ii) All admission authorities must participate in the Fair Access Protocol (including Academies, all types of Free Schools, University Technical Colleges and Studio Schools) in order to ensure that unplaced pupils are allocated a school place quickly. (SA Code 3.11 & DfE Guidance Nov 12)

- iii) The operation of the Fair Access Protocol is outside the arrangements of co-ordination and is triggered when an eligible pupil has not secured a school place under normal in-year admission procedures. The Fair Access protocol is operated in addition to, and not as a replacement for, our other in-year procedures. (SA Code 3.10, 2.21 & DfE Guidance Nov 12)
- iv) Children allocated a place under the Fair Access Protocol will take precedence over those children already on the school's waiting list. (SA Code 2.14).
- v) Specific to Secondary Schools - Year 11 pupils, unless falling into a relevant category within Chart 1, are not part of the protocol and **schools will be expected to admit Year 11 pupils in accordance with their published admission arrangements**. We do not advise that year 11 pupils transfer school as a pupil can be greatly disadvantaged by a change of school during their GCSEs, particularly when the same subjects and/or syllabi may not be available upon such a change.

When deciding on whether to apply for a transfer out of the current school parents will be advised to consider that work is not transferable between schools and exam boards can rarely be matched and coursework is monitored and cannot be re-done.

- vi) All parents/carers should discuss any requests to transfer with the current school to see if any issues can be resolved and if the child can continue their education without interruptions to their SATS or GCSEs.
- vii) A child without an Education, Health and Care Plan may be assessed as not being suitable to attend a mainstream school where at least two previous mainstream school placements have irretrievably broken down for reasons relating to behaviour, attendance, mental health or other related reasons. Final decisions will be taken by Warwickshire County Council, informed by all circumstances relevant to the case and a decision made as to what education the child is able to access and where the education could be accessed from.
- viii) Challenging behaviour is defined as children who:
- have been permanently excluded;
 - have received a number of fixed term 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 agreed and documented by a range of professionals who are currently involved with the child.

Schools will be considered to have a particularly high proportion of children with challenging behaviour or previously excluded children” if they have a higher percentage of these children across their school than other schools in their network area or consortium. The definition of ‘challenging behaviour’ will be kept under regular review.

- ix) Warwickshire has a number of grammar schools, all of whom participate in the operation of the protocol. If a grammar school is identified as the most appropriate setting for a pupil that is currently being placed via the protocol, the following process will be followed; If the pupil has not previously taken a test to identify their levels of ability then they will sit such a test to determine whether they may cope with the academic structure and curriculum within grammar schools. The results will be compared to those of the cohort that they would be joining. If the child has been found to fall within a range consistent with the cohort for the relevant academic year at the grammar school in question then consideration will be given by the grammar school for a placement.

Grammar schools are also encouraged to support the Fair Access process in other ways where appropriate.

3. Overview and Aims of the Fair Access Protocol

- i) The Fair Access Protocol’s aim is to ensure every pupil residing within Warwickshire, eligible to be placed via the protocol, has access to the most appropriate education provision within a timely manner, thus avoiding time out of education. Once a pupil has had an in-year application for a place refused on the grounds that the protocol applies, the process timeline will be followed as set out in the attached appendix. **Parental preference does not need to be followed.**
- ii) When seeking to place a pupil under the Fair Access Protocol, all schools should be treated in a fair, equitable and consistent manner. (DfE Guidance Nov. 12)
- iii) All schools should work together collaboratively, taking into account the needs of the pupil and those of the school. (DfE Guidance Nov. 12)
- iv) Warwickshire County Council will pursue the following additional aims through the Protocol -
- Acknowledge and assess the real needs of vulnerable children.
 - Support Schools/Academies with their vulnerable children to avoid exclusion.
 - Ensure appropriate placement is identified either in mainstream or Alternative Provision.
 - Recognise and support Schools/Academies that have a disproportionate number of children with behavioural needs.
 - Record the destination and impact of the children placed through the protocol.
 - Increase participation of children within schools and academies.
 - Reduce the amount of permanent exclusions.

Please note – The placing of unplaced children through the protocol will take precedence if there is no solution to be found for the admission of any one child which meets all other aims.

Circumstances in which an admissions authority can refuse to admit a child

Section 86B of the School Standards and Framework Act 1998 requires admission authorities to comply with parental preferences for school places except where “compliance with the preference would prejudice the provision of efficient education or the efficient use of resources”. This is generally interpreted within Warwickshire as meaning that an admission authority can refuse admission in the following circumstances:

- Where the year group to which the child would be admitted is full, and it would be prejudicial to the provision of education and/or the welfare of pupils and staff to admit any additional pupils;
- Where the child in question falls under the Fair Access Protocol, and it would be prejudicial to the provision of education and/or the welfare of pupils and staff to admit that particular child; or
- Where the child in question does not fall under the Fair Access Protocol, but the admission authority can demonstrate to the satisfaction of Warwickshire County Council that it would be prejudicial to the provision of education and/or the welfare of pupils and staff to admit that particular child due to the school having a particularly high proportion of children with challenging behaviour or previously excluded children. This category can only be used in exceptional circumstances.

In all the above circumstances, parents have a right to bring an appeal against the refusal to admit their child. The law also requires admission authorities to refuse to comply with Section 86B if doing so would lead to a breach of the ‘infant class size limit’, except in some limited exempt cases, but again parents have a right to appeal such a refusal. Admission authorities are permitted to refuse to admit twice permanently excluded pupils in circumstances when Section 87 of the 1998 Act applies.

4. Exceptional Circumstances in Schools

All schools are in scope for admitting children placed through Fair Access. However, there may be exceptional circumstances that justify temporary exemption from the Fair Access process. Schools will be able to present their case for exemption to the Local Authority via the Lead Officer for Fair Access. Schools will be required to complete the School Exceptional Circumstances pro-forma (**Appendix A**) and any granted exemption will only be considered valid for a maximum period of 12 weeks.

5. Who will the protocol cover?

The difference between In Year Admissions and Fair Access:

- i) In Year Admissions relate to all admissions to school from reception to Year 11 which are not covered by phase transfer schemes. In most cases the admissions process is straightforward. A parent applies for a place in a school where there is a vacancy and the child is admitted to school if a place is available.
- ii) In other cases there may be extenuating circumstances as to why the child's admission is not deemed to be a straightforward in-year admission and the child is refused a place through the in-year admissions process. The child will then need to be placed in a school via the Fair Access Protocol, despite places being available within the relevant year group. **See chart 1**

The circumstances can include;

- an unplaced child who was not previously permanently excluded but who was attending a Pupil Referral Unit (PRU).
 - an unplaced child whose parent/carer states that the child has medical or educational needs but does not have an Education, Health and Care Plan (All information will be explored to determine the best possible route for admission. (WCC officers may refer to the ABP Steering Group members for advice)
 - an unplaced child who has not previously attended a mainstream school or who has not attended a mainstream school for more than 1 school term (For example a home educated child or persistent non-attender)
- iii) All parents/carers who wish to apply for an in-year school place are required to complete an In Year Online Application Form through the parent portal on Warwickshire's website (www.warwickshire.gov.uk) unless it is a school who administer their own in-year admissions. Details of these schools are on the Warwickshire County Council website.
 - iv) Although parental preference does not need to be complied with when placing under the Fair Access Protocol, the wishes of parents should be taken into account to avoid possible non-attendance (everything will be done to manage expectations).
 - v) Where a parent names a preferred school, but Warwickshire County Council would not place there under any of the processes outlined in this protocol, Admission Officers will inform parents of this outcome and of their right to appeal but will not pursue the place at that school.
 - vi) Schools are responsible for presenting any cases listed above to the Lead Officer for Fair Access. The Lead Officer for Fair Access may utilise the local representative from the ABP Steering Group for guidance and reference;

however, the Local Authority reserves the right to start the formal process of direction to a school, if a school refuses admission and no local agreement can be reached. If schools have Academy status, referral to the ESFA will follow.

- vii) The Local Authority will take all reasonable steps to ensure that admission authorities are provided with all relevant information to ensure that decisions can be made by the admission authority as to whether the Fair Access Protocol applies. If an application is deemed to fit the criteria for placement under the Fair Access protocol, (see Chart 1), a school **may** refer the case back to the Local Authority and refuse admission, even if they have places available. Parents retain the right to appeal this decision through the usual admission appeal route.
- viii) The Admissions Team will undertake appropriate due diligence on all Fair Access cases to ensure that as full as possible an understanding of each child's case is available both to itself and to the relevant placement panels and schools in order for an informed decision to be made as to the child's educational setting placement. It may be a school will accept a pupil even though they are not next on the points system to be considered, in which case they will be given the points for the child as if placed via the protocol.
- ix) The groups of children and young people placed via the protocol are in many cases likely to be classed as vulnerable for various reasons. If after admission, a school identifies that a child presents issues of concern, they should take appropriate steps to engage other agencies, for example through initiating an Early Help Assessment.
- x) If a child's circumstances are not covered in Chart 1 then the child does not form part of the FAP, and they therefore cannot be refused a place by a school on that basis. It is acknowledged however by the local authority that some other groups of children admitted to a school do pose some additional challenges, and therefore points will be awarded for admitting pupils fulfilling the criteria set out in Chart 2, so long as these are notified appropriately to the local authority
- xi) The list of children to be included in a FAP 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: each of these categories is weighted as agreed by the steering group. (SA Code 2014, 3.15).

Chart 1 – FAP applies and admission can be refused

Weighting priority Points

a) children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education	1	50
b) children who have been out of education for two months or more	7	30
c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;	3	50
d) children who are homeless;	9	20
e) children with unsupportive family backgrounds for whom a place has not been sought;	8	20
f) children who are carers; and	10	20
g) children with special educational needs, disabilities or medical conditions (but without an Education, Health and Care Plan).	4	50

Warwickshire defines g) SEN as a child currently being supported for SEN and exhibiting challenging behaviour.

In addition to the minimum requirements listed in the SA Code 2014, Warwickshire's protocol includes the following:

h) Children who have been permanently excluded and who have no school place as a result	2	50
i) Unplaced children currently actively known to other professional agencies under CIN or CP plans.	11	20
j) Unplaced children whose attendance was below 85% or who were classed as persistent non-attenders in the current or last academic year, thus allowing for transfer phases. <i>The local authority will need to see evidence of this.</i>	12	20
k) Unplaced children for whom there is documented evidence that they were previously identified as being at risk of permanent exclusion in the current or last academic year, thus allowing for transfer phases. <i>The local authority will need to see evidence of this.</i>	5	40
l) Unplaced children for whom there is documented evidence that demonstrates persistently challenging behaviour in the current or last academic year. For example; a consistently high volume of FTE's per term in the current or previous academic year, thus allowing for transfer phases. <i>The local authority will need to see evidence of this.</i>	6	40

Under this protocol 'Unplaced' is defined as any child who is not on a school roll or is on a school roll but no longer resident within a *reasonable travelling distance of that school. *Reasonable distance is determined by Warwickshire County Council

Chart 2 – FAP does not apply but points awarded for admission

Children who have been accepted permanently into a school following a successful managed move	40
Children whose managed moves broke down or ended after a minimum of six weeks	20
Child Looked After	30
Year 11 pre January census;	40
Year 11 post January census;	10
Children who have been removed by their parents from a school roll to be home educated and are now seeking another school place.	20
Children with an Education, Health and Care Plan	25

6. Operation of the Fair Access Protocol at Primary Phase

- i) At Primary Phase all Fair Access referrals will be considered by a central Fair Access and Assessment Gateway panel that will meet monthly with dates set in advance for the whole school year.
- ii) Membership of the Primary Fair Access and Assessment Gateway.
 - Five Primary Headteacher representatives identified by Local Area Analysis Groups.
 - Multi agency representatives' e.g. social care, youth offending, RISE, SENDAR, Strengthening Families.
 - Lead officer for CME and EHE
 - Lead officer for In Year Admissions and Fair Access
 - Primary Fair Access Lead.
- iii) For each referral, the School Admissions team will compile centrally held information to inform and support the panel to make decisions. Fair Access decisions will be based on ensuring all schools take a fair share of pupils and the number admitted through fair access over the past three terms will count as a significant factor for allocation.
- iv) The following factors will also be considered when making decisions at panel meetings:
 - distance from home
 - OFSTED category,
 - % of pupils with EHCP
 - % of CLA pupils

- number on roll in the relevant year group
 - exceptional school circumstances
 - ensuring no breach of infant class size laws
 - parental preference
- v) Where schools in particular areas are experiencing higher demand for Fair Access placements, scoring grids may extend beyond the six nearest schools to the child's home address in order to ensure fairness and equity of placements.
- vi) A spreadsheet will be kept updated for each area denoting placements made at panel meetings. This will be used at the following panel meeting to advise whether students allocated previously are now on the roll of that school and to inform new placement decisions.

7. Operation of the Fair Access Protocol at Secondary Phase

- i) At Secondary Phase all Fair Access referrals will be considered through the Area Behaviour Partnership for each area which will meet every 4/5 weeks with dates set in advance for the whole school year. The responsibility for representation at the Secondary ABP Leads meeting lies with the schools. This must be a colleague who is on the SLT and has full decision making authority. Colleagues will collaborate to find the best possible placement for the child, sharing best practice on how to support the admissions of any hard to place students.
- ii) No case can be deferred for discussion with the Headteacher following the meeting. **All decisions regarding the admission of any child made at the ABP leads meetings are final and the child should be placed on the roll of the identified school within 5 school days, even if there is to be a phased integration.**
- iii) Membership of the Area Behaviour Partnerships
- A member of the Senior Leadership Team, (SLT) with full decision making authority, from each of the secondary schools within each of the ABP's.
 - ABP coordinators
 - Multi agency representatives' e.g. social care, youth offending, RISE, SENDAR, Strengthening Families.
 - Lead officer for CME and EHE
 - Lead officer for In Year Admissions and Fair Access
- iv) For each referral, the School Admissions team in conjunction with the Education Entitlement Team will compile centrally held information to inform and support the panel to make decisions. The centrally held database for Secondary School Fair Access placements will also be used to ensure all schools take a fair share of pupils.

- v) The following factors will also be considered when making decisions at panel meetings:
- Distance from home/transport links
 - Exceptional school circumstances
 - The ranked order of schools in an area in accordance with the protocol points based system operated by the Local Authority
 - Schools previously attended by the child, including under a managed move. Consideration will be given to any previous serious breakdown in relationships between a school and the family to include failed managed moves and peer relationship breakdown.
 - Parental preference

Please note: The database incorporates all previous placements along with census information pulled through on a yearly basis. Children who are still on the roll of the school at the start of the next academic year will be carried over to the new database.

8. Refusal to Admit Children and Direction to Admit

- i) 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. (SA Code 3.13) before admission would be considered.
- ii) Where a pupil has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion. The twice excluded rule does not apply to children who were below compulsory school age at the time of the exclusion, children who have been re-instated following a permanent exclusion (or would have been had it been practicable to do so), and children with Education, Health and Care Plans.' (SA Code 3.8). It also does not apply to any exclusion which has been quashed by an Independent Review Panel.
- iii) Where an admission authority does not wish to admit a pupil with challenging behaviour outside the normal admissions round, even though places are available, it can refuse to admit the child if the Fair Access Protocol applies, but **must** refer the case to the local authority for action under the FAP. 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 pupil, a previously looked after pupil or a pupil with an Education, Health and Care Plan naming the school in question, as these children **must** be admitted and requests for admission of such children must not be turned down on Fair Access grounds. (SA Code 3.12).

- iv) If the admissions authority refuses to admit a child on Fair Access grounds, the case must be referred to the Lead Officer for Fair Access for consideration. The Lead Officer will expect to see evidence in such circumstances of the:
- particularly high proportion of children with challenging behaviour, and/or,
 - particularly high proportion of previously excluded children, and/or
 - implications of the admission of an additional pupil with challenging behaviour.
- v) The Lead Officer will then consider the case made by the school. The Lead Officer may consult with a member of the ABP Steering Group for the area in deciding whether the FAP does apply.
- vi) **Admission authorities in Warwickshire are required to comply with the terms of this Fair Access Protocol and, as a result, should therefore admit any pupil referred to the school under the FAP.** If an admission authority refuses to admit a child, but the County Council remains of the view that it is the most appropriate school for the child, then the County Council will follow statutory steps under the School Standards and Framework Act 1998, either to direct admission or to make an application for direction to the ESFA, as appropriate.
- vii) Children placed through either panel should be on roll at the receiving school within 5 school days, even if the child is starting on a phased reintegration plan.

Please Note: A school/academy placement through the Fair Access Protocol will **NOT** remove a parent/carer's right of appeal for any school/academy for which they have been refused a school place. Parents will be guided to the process of appeals if necessary. Appeal panels will be made aware of the conditions of this protocol.

9. Managed Move Process

A managed move protocol is in place which works to support the transfer of pupils between schools for children who are at risk of losing their school place. Such processes operate independently of the Fair Access Protocol, but are designed to support difficult cases. Points are awarded (see Chart 2) to acknowledge support of schools with vulnerable children needing to change schools.

Please note that any form of managed move must be with the full agreement of the family and used as a support mechanism.

10. Referral Process from Schools to Panels

- i) All Fair Access cases will be processed and presented at either the Primary Assessment Gateway or the Area Behaviour Partnership Leads meetings by the Local Authority's Fair Access Team.

Direct referrals from schools can be made in the following cases:

- **Primary Schools:** referrals directly from schools, via the Warwickshire County Council Fair Access Protocol (FAP) process, for consideration for a managed move or in cases where a Headteacher would like to seek advice on any further interventions which could be accessed or signposted.
 - **Secondary Schools:** referrals directly from schools, via the Area Behaviour Partnership process, for consideration for a managed move or to access alternative provision.
- ii) All referrals must be made using the Warwickshire Learner Information Form (LIF). The form must be completed in full to support a smooth and efficient process for the child. All completed forms must be sent by email in line with the agreed deadlines for consideration at the relevant panel meeting.
- iii)

11. Monitoring the Operation of the Protocol

Any concerns over lack of cooperation with the FAP process will be escalated to relevant Warwickshire County Council colleagues. This will include any School/Academy that has not taken a child on roll within 10 school days of the placement decision being made.

If there is an unavoidable delay beyond 10 school days, the Fair Access Team must be notified to ensure the correct safeguarding is in place for the child.

12. Protocol Review

The Fair Access Protocol will be reviewed on an annual basis by the Local Authority in conjunction with Headteachers.

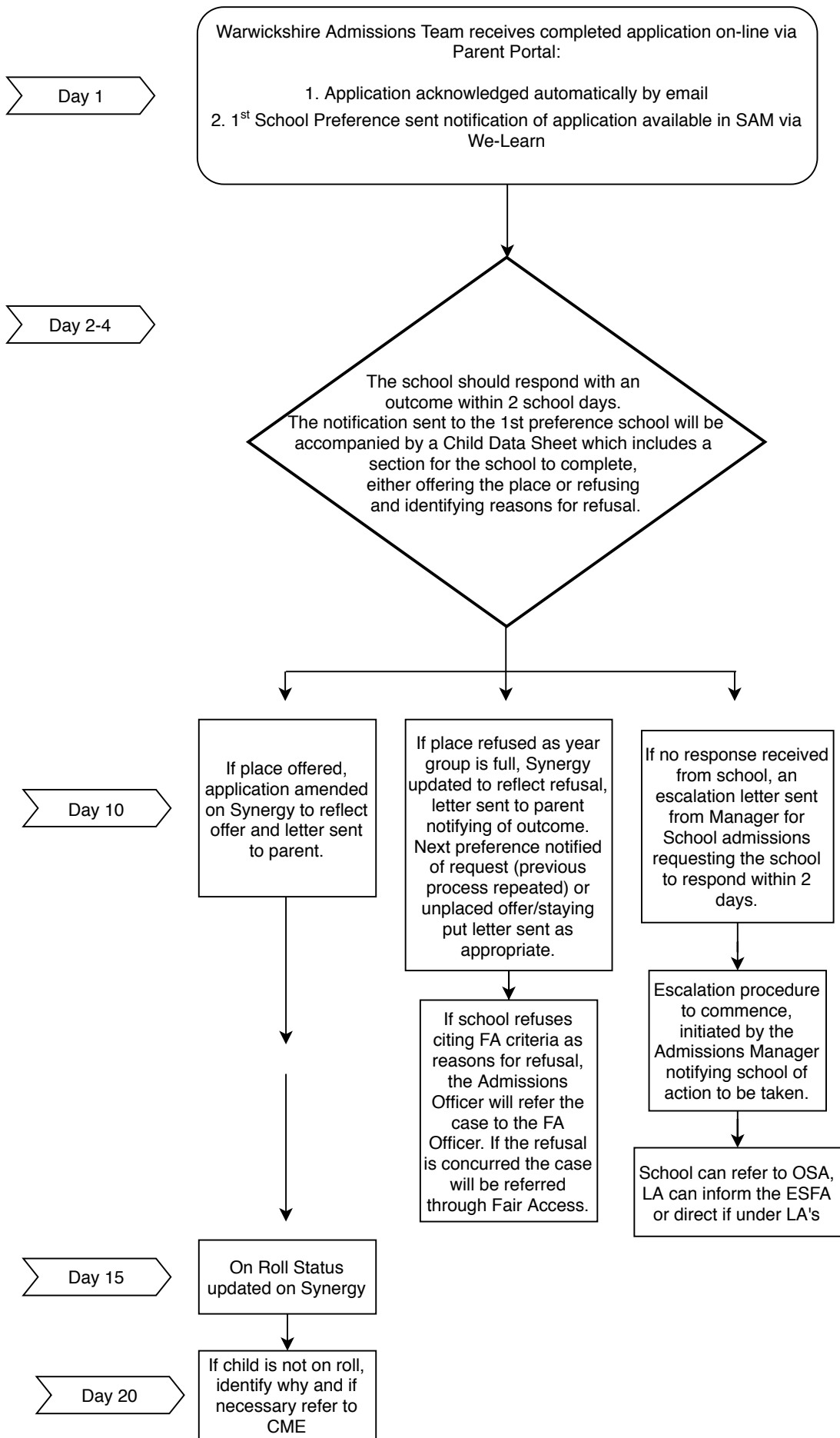
Appendix A - Fair Access request – Exceptional School Circumstances Submission

All schools are required to participate in admissions through the Local Authority Fair Access protocol. Under exceptional circumstances, a school may wish a Fair Access panel to consider exemption from taking a Fair Access student in one or more year groups. Being full in the year group cannot be a reason for exemption. Schools wishing to be considered for exemption should complete the additional information below for the panel to consider. **Information is required across each year group for which exemption is required.**

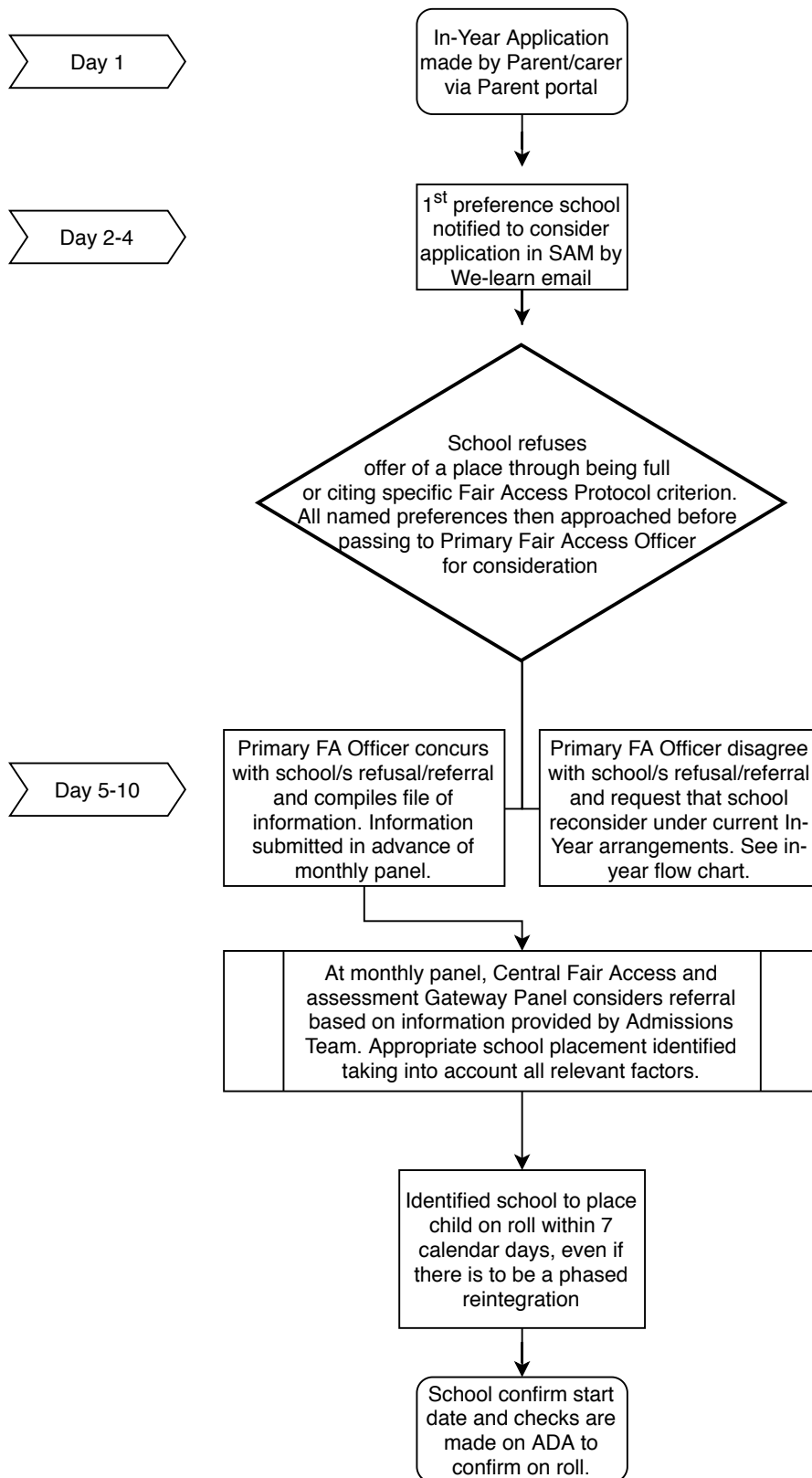
	Yr	Yr	Yr
Number of pupils on roll in each year group			
Number currently over PAN in each year group (please enter zero if not over PAN)			
Number of pupils admitted into each year group through Fair Access in the last 12 months			
Number of fixed term exclusions in each year group in the last 12 months			
Number of permanent exclusions in each year group in the last 12 months			
Number of pupils with behaviour support plans on roll in each year group			
Number of pupils with an EHCP on roll in each year group			
Number of CLA's on roll in each year group			
Number of pupils with additional needs who attract additional funding on roll in each year group			
Number of pupils open to Children's Services/Early Help			
Ofsted rating/AAG rating. Last Inspection Date			
Any other exceptional circumstances (Please note, general level of behaviour of the receiving cohort is not classified as an exceptional circumstance). Please continue of the page if necessary.			

Thank you for your responses. These factors will be considered by the relevant Fair Access Panel as part of the placement process.

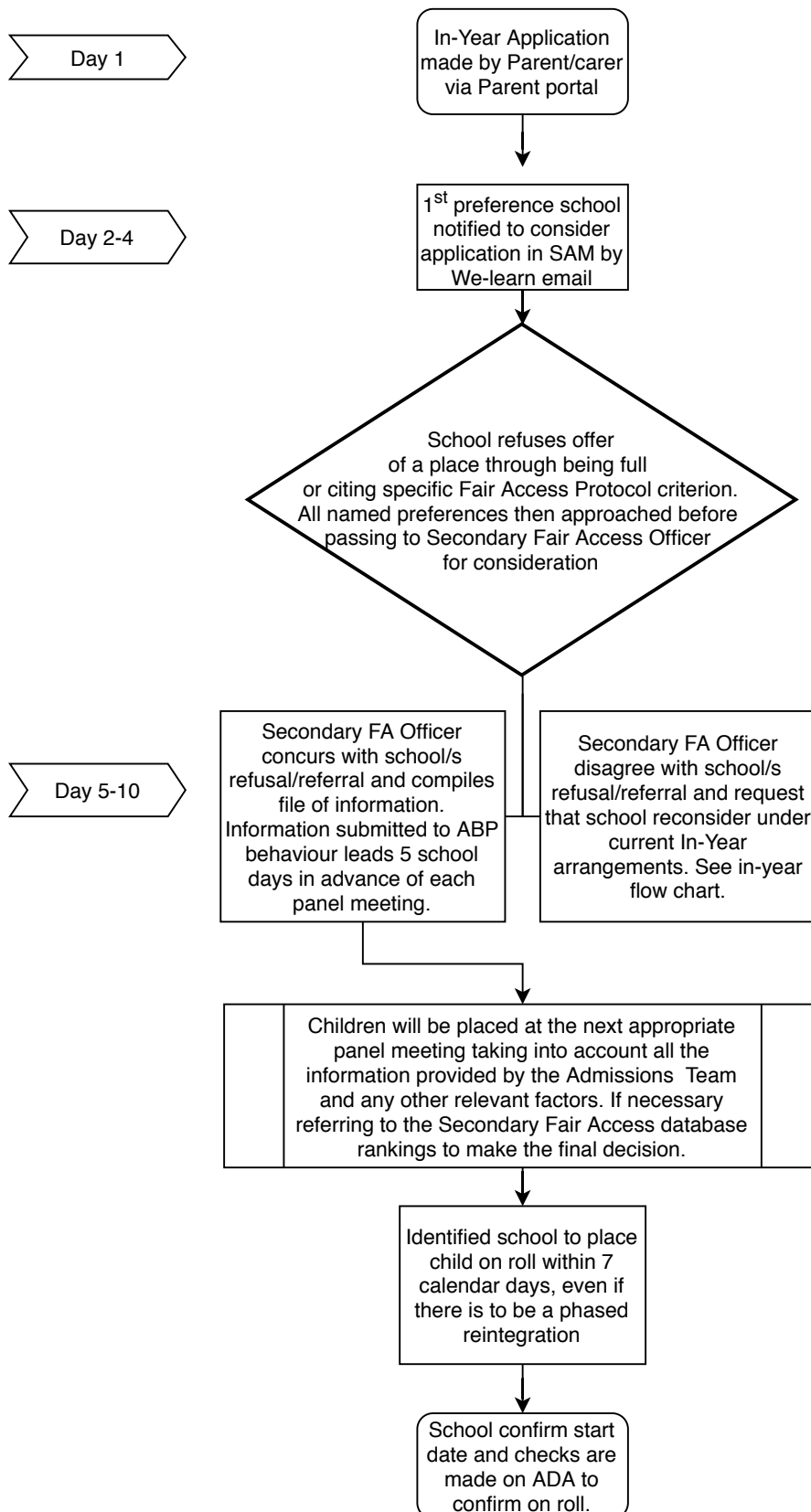
Appendix B - In Year Admissions



Appendix C - Primary Fair Access process



Appendix D - Secondary Fair Access process



Glossary

EHCP	Education, Health and Care Plan
CLA	Child Looked After
RISE	Rise is the name for all emotional well-being and mental health services for children and young people who are registered with a Coventry or Warwickshire GP.
SENDAR	Special Educational Needs and Disability Assessment and Review Team
CME	Children Missing from Education
EHE	Electively Home Educated
ABP	Area Behaviour Partnership
FAP	Fair Access Protocol
SA Code	School Admissions Code
DfE	Department for Education
ESFA	Education and Skills Funding Agency
PRU	Pupil Referral Unit
WCC	Warwickshire County Council
CIN	Child in Need
CP	Child Protection
SLT	Senior Leadership Team
LIF	Learner Information Form
PAN	Published (or Planned) Admission Number
AAG	Area Analysis Groups
OfSTED	Office for Standards in Education, Children's Services and Skills

EQUALITY IMPACT ASSESSMENT/ ANALYSIS (EqIA)

Primary & Secondary Schools Fair Access Protocol

Warwickshire County Council

Equality Impact Assessment/ Analysis (EqIA)

Group	Communities Directorate
Business Units/Service Area	Education and Learning
Plan/ Strategy/ Policy/ Service being assessed	Primary & Secondary Fair Access Protocol
Is this is a new or existing policy/service?	It is an existing policy / service which is subject to review.
If existing policy/service please state date of last assessment	Primary September 2017 Secondary June 2018
EqIA Review team – List of members	Cheryl Wild
Date of this assessment	17/06/2019
Signature of completing officer (to be signed after the EqIA has been completed)	C. Wild
Are any of the outcomes from this assessment likely to result in complaints from existing services users and/ or members of the public? If yes please flag this with your Head of Service and the Customer Relations Team as soon as possible.	<u>YES</u> / NO
Name and signature of Head of Service (to be signed after the EqIA has been completed)	Ian Budd
Signature of GLT Equalities Champion (to be signed after the EqIA is completed and signed by the completing officer)	Barnaby Briggs

A copy of this form including relevant data and information to be forwarded to the Group Equalities Champion and the Corporate Equalities & Diversity Team

Appendix C

Form A1

INITIAL SCREENING FOR STRATEGIES/POLICIES/FUNCTIONS FOR EQUALITIES RELEVANCE TO ELIMINATE DISCRIMINATION, PROMOTE EQUALITY AND FOSTER GOOD RELATIONS



High relevance/priority



Medium relevance/priority



Low or no relevance/ priority

Note:

1. Tick coloured boxes appropriately, and depending on degree of relevance to each of the equality strands
2. Summaries of the legislation/guidance should be used to assist this screening process

Business Unit/Services:	Relevance/Risk to Equalities																										
State the Function/Policy /Service/Strategy being assessed:	Gender			Race			Disability			Sexual Orientation			Religion/Belief			Age			Gender Reassignment			Pregnancy/ Maternity			Marriage/ Civil Partnership (only for staff)		
	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓						
Fair Access Protocol	✓			✓			✓			✓			✓			✓			✓								
Are your proposals likely to impact on social inequalities e.g. child poverty for example or our most geographically disadvantaged communities? If yes please explain how. N/A																								YES/ <u>NO</u>			
Are your proposals likely to impact on a carer who looks after older people or people with disabilities? If yes please explain how.																								YES/ <u>NO</u>			

Appendix C

Form A2 – Details of Plan/ Strategy/ Service/ Policy

<u>Stage 1 – Scoping and Defining</u>	
(1) What are the aims and objectives of Plan/Strategy/Service/Policy?	<ul style="list-style-type: none">i) The School Admissions Code 2014, issued under section 84 School Standards and Framework Act 1998, requires each local authority to have in place a Fair Access Protocol (FAP) agreed with the majority of schools in its area. The requirement is supplemented by further advice from the Department for Education (DFE) 'Fair Access Protocols: Principles and Process' published in November 2012. This sets out some principles to clarify the expectations on all state funded schools (including academies and free schools etc.) as well as all other admission authorities to ensure that FAP's operate effectively at a local level.ii) 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 seeks 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.iii) 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 for their child at any time, to any school outside the normal admissions round and is entitled to an appeal when a place is not offered.iv) All admission authorities must participate in the Fair Access Protocol in order to

Appendix C

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.

2. The Warwickshire context and statutory guidance

- i) The Fair Access Protocol (FAP) for Warwickshire has been written in accordance with paragraphs 3.9 – 3.23 of the School Admissions Code 2014, and the DFE's departmental advice November 2012 in partnership with a representative from a local school in each area of the County forming an Area Behaviour Partnership (ABP) Steering Group that will review the process annually;
- ii) 'All admission authorities must participate in the Fair Access Protocol (including Academies, all types of Free Schools, University Technical Colleges and Studio Schools) in order to ensure that unplaced pupils are allocated a school place quickly'; (SA Code 3.11 & DFE Guidance Nov 12)
- iii) 'The operation of the Fair Access Protocol is triggered when an eligible pupil has not secured a school place under normal in-year admission procedures'. The Fair Access protocol is in addition to our In Year procedures. (SA Code 3.10, 2.21 and DFE Guidance Nov 12)
- iv) Where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion. The twice excluded rule does not apply to children who were below compulsory school age at the time of the exclusion, children who have been re-instated following a permanent exclusion (or would have been had it

Appendix C

been practicable to do so), and children with special educational needs statements or Education, Health and Care Plans. (SA Code 3.8 & DFE Guidance Nov 2012).

- v) Children allocated a place under the Fair Access Protocol will take precedence over those children already on the school's waiting list; 'Fair Access Protocol, must take precedence over those on a waiting list.'(SA code 2.14).
- vi) Schools cannot cite oversubscription as a reason for not admitting a pupil under the Fair Access Protocol. Year 11 pupils, unless falling into a relevant category within Chart 1 are not part of the protocol and schools will be expected to accept Year 11 pupils in accordance with their published admissions arrangements. We do not advise that year 11 pupils transfer school as a pupil can be greatly disadvantaged by a change of school during their GCSEs, particularly when the same subjects and/or syllabi may not be available upon such a change. When deciding on whether to apply for a transfer out of the current school parents will be advised to consider that work is not transferable between schools and exam boards can rarely be matched and coursework is monitored and cannot be re-done.
- vii) All parents/carers should discuss any requests to transfer with the current school to see if any issues can be resolved and if the child can continue their education without interruptions to their GCSEs.
- viii) Warwickshire has a number of grammar schools all of whom wish to participate in the operation of the protocol. If a grammar school is identified as the most appropriate setting for a pupil that is currently being placed via the protocol, the following process will be followed. If the pupil has not already been found to be of suitable academic ability for the relevant cohort then they will sit a test to identify

Appendix C

	<p>their levels of ability and whether they may cope with the academic structure and curriculum within grammar schools. The results will be compared to those of the cohort that they would be joining. If they fall within the range set out by each grammar school consideration will be given by the grammar school for a placement.</p>
(2) How does it fit with Warwickshire County Council's wider objectives?	<p>By ensuring children are able to continue to access education. It aligns with WE 2 of the Education Strategy.</p>
(3) What are the expected outcomes?	<p>The Fair Access Protocol's aim is to ensure every pupil residing within Warwickshire, eligible to be placed via the protocol, has access to the most appropriate education provision within a timely manner, thus avoiding time out of education.</p>
(4) Which of the groups with protected characteristics is this intended to benefit? (see form A1 for list of protected groups)	<p>The Fair Access Protocol is designed to ensure all children have access to the most appropriate education provision. This could benefit any of the above groups with protected interests.</p>
<u>Stage 2 - Information Gathering</u>	
(1) What type and range of evidence or information have you used to help you make a judgement about the plan/ strategy/ service/ policy?	<p>The School Admissions Code 2014, issued under section 84 School Standards and Framework Act 1998, requires each local authority to have in place a Fair Access Protocol (FAP) agreed with the majority of schools in its area. The requirement is supplemented by further advice from the Department for Education (DFE) 'Fair Access Protocols: Principles and Process' published in November 2012. This sets out some principles to clarify the expectations on all state funded schools (including academies and free schools etc.) as well as all other admission authorities to ensure that FAP's operate effectively at a local level.</p>

Appendix C

	<p>Data evidenced pupils out of education for long periods of time showed the need for a more robust system of challenge and fair distribution of challenging pupils. The policy is designed to reduce time out of education by implementing the legal process of direction much earlier.</p>		
<p>(2) Have you consulted on the plan/ strategy/ service/policy and if so with whom?</p>	<p>Details of the proposed new Primary & Secondary Fair Access Protocol were emailed to Warwickshire State Funded Primary & Secondary School Headteachers on Thursday 2nd May and advised the consultation process would run until Friday 6th June 2019. They were asked to acknowledge receipt and give feedback by the deadline.</p> <p>At the close of the consultation 157 out of 230 (68%) of Primary and Secondary Schools provided a response to the proposed protocol. Of the schools that responded, 144 (63%) said 'Yes' to the statement 'Do you agree to the implementation of this Fair Access Protocol for September 2019?' 13 (5%) of schools replied 'No' and 73 (32%) of schools did not respond.</p>		
<p>(3) Which of the groups with protected characteristics have you consulted with?</p>	<p>Details of the proposed new Fair Access Protocol were emailed to Warwickshire State Funded Primary & Secondary School Headteachers.</p>		
<p>Stage 3 – Analysis of impact</p>			
<p>(1) From your data and consultations is there any adverse or negative impact identified for any particular group which could amount to discrimination?</p> <p>If yes, identify the groups and how they are affected.</p>	<p>RACE</p>	<p>DISABILITY</p>	<p>GENDER</p>

Appendix C

	MARRIAGE/CIVIL PARTNERSHIP	AGE	GENDER REASSIGNMENT
	RELIGION/BELIEF	PREGNANCY MATERNITY	SEXUAL ORIENTATION
(2) If there is an adverse impact, can this be justified?	N/A		
(3) What actions are going to be taken to reduce or eliminate negative or adverse impact? (This should form part of your action plan under Stage 4.)	N/A		
(4) How does the plan/strategy/service/policy contribute to promotion of equality? If not what can be done?	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 seeks 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. The policy does not		

Appendix C

	distinguish between race, gender etc. but does ensure equality across all pupils who are placed via this process.
(5) How does the plan/strategy/service/policy promote good relations between groups? If not what can be done?	<p>In implementing the Fair Access Protocol we will work closely with schools, colleges, parents, students and all other relevant parties to ensure children are allocated a suitable education provision.</p> <p>The policy does not include pupils who would be in receipt of an EHCP as these pupils are placed via our SEND team.</p>
(6) Are there any obvious barriers to accessing the service? If yes how can they be overcome?	N/A
(7) What are the likely positive and negative consequences for health and wellbeing as a result of this plan/strategy/service/policy?	It is not anticipated that the proposed changes will have a negative impact on health and wellbeing. The positive impact will be children quickly provided with education provision.
(8) What actions are going to be taken to reduce or eliminate negative or adverse impact on population health? (This should form part of your action plan under Stage 4.)	It is not anticipated that the proposed changes will have a negative or adverse impact on population health.
(9) Will the plan/strategy/service/policy increase the number of people needing to access health services? If so, what steps can be put in place to mitigate this?	No.

Appendix C

(10) Will the plan/strategy/service/policy reduce health inequalities? If so, how, what is the evidence?	No.
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<u>Stage 4 – Action Planning, Review & Monitoring</u>					
If No Further Action is required then go to – Review & Monitoring	EqIA Action Plan				
(1) Action Planning – Specify any changes or improvements which can be made to the service or policy to mitigate or eradicate negative or adverse impact on specific groups, including resource implications.	Action	Lead Officer	Date for completion	Resource requirements	Comments
	To review / revise the document following consideration by Corporate Board / O&S.	Cheryl Wild	January – May 2019		Completed
	To review / revise the document following consultation exercise	Cheryl Wild	May – June 2019		Completed

Appendix C

	To review / revise the document following implementation.	Cheryl Wild	February 2020		
(2) Review and Monitoring State how and when you will monitor policy and Action Plan	The policy will be regularly reviewed as the proposals move through the democratic services / consultation process.				

Please annotate your policy with the following statement:

'An Equality Impact Assessment/ Analysis on this policy was undertaken on 17/06/2019 and will be reviewed on an annual basis.