



Hertfordshire County Council

The Fair Access Protocol for Schools

2021

Introduction:

There is a statutory duty that schools participate in a Fair Access Protocol and Hertfordshire has a successful history of this. Together, the Local Authority and Hertfordshire schools have proudly achieved this through consensual work and a deep commitment to inclusive education at all levels and phases.

As such, this reviewed protocol ensures compliance in line with the requirements laid out by Central Government. There is a focus on 'fair distribution' in recognition of the situation for schools and continues to provide a clearer framework and transparency around the process of direction.

We are committed to developing our strong relationship with our schools and hope that these new measures continue to support both our most vulnerable children and the highly respected schools who offer them a place.

The main changes to this protocol are in response to the School Admissions Code, Sept 2021. This new code outlines that the Fair Access Protocol may only be used to place DfE defined categories of vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures.

Therefore, in the first instance all children within these defined categories will be advised to complete an in year application. The Fair Access and Inclusion Teams will continue to oversee these cases and offer similar support however the teams will initially consider the nearest schools with available places (in line with the In Year admission arrangements requirement).

This applies to:

All schools within Hertfordshire County Council as specified in the School Admissions Code including those which are or will become responsible for their own admissions, e.g., foundation, voluntary aided schools, and academies.

It is a requirement of paragraph 3.14 of the School Admission Code that "all admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible." The latest revision of the School Admissions Code came into force in September 2021.

This protocol applies only to children resident in Hertfordshire and to Hertfordshire schools, although it may be applied to children resident in Hertfordshire seeking a place at a school outside Hertfordshire if the admitting authority for the school is prepared to accept this. It does not apply to special schools and education support centres.

Additionally, it does not apply to children whose parents did not secure provision at their preferred schools at

- Primary transfer
- Infant to Junior transfer
- First to middle transfer
- Middle to Upper transfer
- Secondary transfer

This protocol will not apply to a Child Looked After, or a child with an Education and Health Care Plan naming the school in question, as these children MUST be admitted. Further information relating to admissions for CLA and PCLA is included below in Section 4.

Protocol version and review date:

The previous version was agreed via the Hertfordshire Association of Secondary School Head teachers and the Primary Head Forum, Hertfordshire Primary Heads Forum, Hertfordshire Association of Governors Roman Catholic Diocese (Westminster), Church of England Diocese (St Albans), and Herts for Learning (school partners) Sept 2019.

This version is amended in line with the School Admissions Code update September 2021, and consultation with schools ran from Wednesday 01 September 2021 to Wednesday 13 October 2021.

The protocol will now be reviewed through an annual consultation process unless a need to review is identified earlier due to legislative changes.

Description of Policy

Children are admitted to school following an application submitted by a parent or carer. Procedures for managing applications, deciding whether a place is available and how to respond with the outcome (offer or refusal) are the responsibility of schools and the Local Authority (They must comply with the requirements of the School Admissions Code and other relevant legislation).

This protocol describes the principles to be applied and procedures to be followed in relation to the In Year admission of “hard to place” children outside the normal admission round.

It also includes in the protocol procedure for when a governing body wishes to refuse the admission of a child, and describes how decisions will be made by Hertfordshire County Council whether to direct a maintained school to admit a child or to seek a direction to admit from the Secretary of State for Education with regard to academies (including free schools, and university technical colleges)

Legislation and linked policies

Admission Authorities, Schools, Adjudicators, Appeals Panels, Local Authorities and Maintained Schools must comply with the **School Admissions Code** and the **School Admission Appeals Code**. These codes are applied to Academies through their Funding Arrangements.

Other Local Authority linked policies are:

Hertfordshire County Council’s coordinated schemes of admission for first, primary, junior, middle, secondary, upper schools and academies (including free schools, and university technical colleges)

Hertfordshire’s Emotional Wellbeing and Behaviour Strategy 2020 – 2023

Equality Statement

Hertfordshire County Council will only commit to policies and practices which will eradicate discrimination and promote equality for all, regardless of age, gender, disability, religion and belief, race and ethnicity and sexual orientation. This protocol will be subject to an Equality Impact and Needs Assessment. This assessment (appendix 4) will be integral to all future policy and guidance reviews

Safeguarding Statement

All Fair Access and Inclusion Team members will have appropriate safeguarding training and induction so that they understand their roles and responsibilities and are confident in carrying them out. Settings, schools, children, young people and their parents or carers, or any member of the community should feel secure that they could raise any issues or concerns about the safety or welfare of children and know that they will be listened to and taken seriously. This will be achieved by maintaining an ethos of commitment to safeguarding and promoting the welfare of children and young people. This is supported by a clear Local Authority Child Protection policy, appropriate induction and regular training in line with current legislation and guidelines.

Section 1: Main principles

1.1 There are two main principles of the Fair Access Protocol.

1. Some children, due to their circumstances, are likely to find it significantly harder than the average child to settle at school.¹ The aim of the protocol is to reduce the time that vulnerable and challenging pupils miss out on education and ensure these children are placed swiftly. In line with statutory legislation, these pupils should be on roll and attending school within the timescales described in this protocol to ensure that these children do not remain out of education and awaiting placement any longer than is absolutely necessary.

It is expected that all parties will act with a sense of urgency to identify a school place for any child who has had difficulty securing one or who falls under the Fair Access Protocol. Pupils identified as falling within the scope of this protocol should be on roll at school no later than 20 school days after the school identified under the protocol has been approached. Children missing education are at significant risk of underachieving, being victims of harm, exploitation or radicalisation, and becoming NEET (not in education, employment or training) later in life and there is a statutory expectation of working in partnership to safeguard and promote the welfare of children.²

2. These children may have additional needs and may be likely to place a higher demand on a school's resources. The Hertfordshire Fair Access Protocol provides a fair and transparent method of admitting hard to place children to schools to ensure that these admissions are spread fairly and do not fall disproportionately upon certain schools. As such, all primary and secondary Fair Access admission statistics will be published at the end of each academic year, and this protocol offers further procedure to support the legislative requirement of 'Fair Distribution'.³

A termly and yearly audit will be made of all the decisions taken by the Fair Access and Inclusion Teams to monitor consistency and effectiveness which will be included in the LA report to The Schools Adjudicator on an annual basis.⁴ In addition reports will be made to Primary and Secondary Headteacher's groups on a termly basis.

¹ School Admissions Code DfE Dec 2021: Section 3, pt. 17, p.33

² Children missing education: Statutory guidance for local authorities DfE September 2016, p.5

³ School Admissions Code DfE Dec 2021 Section 3, pt. 16, p.33

⁴ School Admissions Code DfE Dec 2021 Section 3, pt.30, p.36

1.2 As outlined in the School Admissions Code, the Fair Access Protocol sits outside of the other admissions processes, and therefore

- schools cannot cite oversubscription as a reason not to admit a Fair Access pupil so the school is able to go over their published admission number for such pupils
- Formal admission appeals for hard to place pupils are not required before a pupil may be admitted under this protocol, and further a pupil who has been denied a place at a school by the Independent Appeal Panel may still be admitted by that school if it is identified under the terms of this protocol as being the one to admit the pupil
- Fair Access pupils must be given priority for admission above other pupils who may be on the school's continuing interest list
- Parent(s)/carer(s) of hard to place pupils do not have the right to demand a place at the school(s) they would prefer their child to attend under the provisions of this protocol, but Parent(s)/carer(s) views should be taken into account.

1.3 The Fair Access Protocol should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered. Fair Access Protocols may only be used to place the DfE identified categories of vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures

1.4 Additionally, where a parent makes an in-year application that meets the thresholds of the Fair Access Protocol, the parent is entitled to an appeal for a preferred school for:-

- the preferred school if approached but refuses to admit
- the preferred school if not identified under the protocol as the school which should admit the child. It is hoped that because it can be demonstrated that a robust and fair protocol for the admission of hard to place pupils is in place, and because a place has been offered at another school under the FAP, that an Independent Appeal Panel will be less likely to uphold an appeal lodged for a preferred school which has not been approached.

1.5 CLA admissions are not subject to this FAP (see Section 4 below). The Fair Access Team will record CLA admissions, and the number of these admissions may be a consideration in placing pupils who meet the threshold for FAP (see Section 5.2)

1.6 In most cases use of the Fair Access Protocol will be unnecessary for a previously looked after child as there would be expectation that admission authorities cooperate with the swift placement of these children. However, the local authority may consider use of their general powers of direction (under paragraphs 3.26-3.28) or asking the Secretary of State to consider a direction (under paragraph 3.29) to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with an admission authority promptly

Section 2: Identification of pupils who meet the Fair Access Protocol

2.1 The School Admissions Code states that admission arrangements must not take into account of any reports from previous schools about past behaviour, attendance, attitude or achievement .⁵ Subject to these provisions, information is requested through the **Fair**

⁵ School Admissions Code DfE Dec 2021: Section 1, pt. 1.9, p.11

Access Protocol (FAP) Referral Form to identify whether a pupil does in fact meet the Fair Access Protocol criteria and to give consideration to the best way forward to ensure the best chance of success at any new education provision. Such background information on a pupil should be used to support a child after admission and cannot be cited as a reason to refuse admission.

- 2.2 The Local Authority will therefore provide schools with this information for a Fair Access pupil they are asked to admit enabling the school to build appropriate reintegration support for the admission if deemed appropriate. Similarly, schools will supply such information when requested by the LA **within 2 days**.
- 2.3 Schools will respond to requests for admission **within 3 days** under this protocol so that the admission of vulnerable pupils is not delayed.
- 2.4 Where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour, it may refuse admission and refer the child to the Fair Access Protocol. The Local Authority will investigate such matters and advise the school/s accordingly. If after investigation the in year applicant does not meet the criteria for Fair Access, the pupil should be admitted to the school without further delay
- 2.5 The needs of children who are not ready for mainstream schooling will be met in accordance with the procedures established on a local basis for alternative provision. Given the size and diversity of the county, alternative provision is offered through a variety of methods, including Education Support Centres, online group tuition and individual tuition. Individualised support within a mainstream school setting is also a possibility.

Section 3: Categories within the Fair Access Protocol

- 3.1 Children defined as “hard to place” for the purposes of this protocol are defined below. Each category of hard to place child has been included in one of two groups, A and B. Group A encompasses those categories of hard to place pupils who are likely to place a significantly higher demand on the resources of a school than the average child and who are likely to present challenging behaviour. Group B encompasses those categories of hard to place pupils who are likely to place a significantly higher demand on the resources of a school than the average child but who might not necessarily present challenging behaviour.
- 3.2 In determining whether or not an individual pupil falls within the scope of this protocol the Local Authority will consider the extent to which the following criteria are met.

Group A

1. **Children attending Pupil Referral Units (PRUs), in Hertfordshire referred to as Education Support Centres (ESCs), who need to be reintegrated back into mainstream education – to include both permanently excluded pupils and those who have not been permanently excluded (DfE required)**
2. **Children withdrawn from schools by their families following fixed period exclusions and unable to find another place – this provision will apply where there is a history of fixed period exclusions for persistent disruptive behaviour rather than for a few isolated incidents.**

3. **Children returning from the criminal justice system (DfE required)**
4. **Children who are at serious, but not imminent, risk of permanent exclusion – the transfer of a child between schools in these circumstances will be referred to as a managed move.**

Group B

5. Children who have been out of education for one month or more where it can be demonstrated that there are no places available at any school within a reasonable distance of their home (excluding children with an allocated school place which the parent has rejected) (DfE required) – this includes children who have no identified school place or provision who have been out of education for this time
6. Children of refugee and asylum seekers (DfE required)
7. Children who are homeless, and homeless due to fleeing domestic violence (DfE required)
8. Children with unsupportive family backgrounds where a place has not been sought (DfE required)
9. Children of traveller heritage (DfE required)
10. Children who are carers (DfE required)
11. Children with special educational needs (but without an Education and Health Care Plan) (DfE required)
12. Children with serious disabilities or serious medical conditions (DfE required)
13. Children of serving UK Service personnel (Including children of service families whose countries have a “Memorandum of Understanding” with the UK Home Office)
14. Children for whom there is no school place within a reasonable travelling distance from the home address
15. Children who are Child in Need or children on the Child Protection Register (DfE required)
16. Previously looked after children for whom the local authority has been unable to promptly secure a school place.

3.3 Additionally, the LA will endeavor to take account of the religious ethos of a particular school in respect of an admission (strong aversion or desire). Where possible and where indicated, pupils with a religious affiliation will be matched to a school of the appropriate faith. However, it is anticipated that faith schools will admit hard to place children even if the pupils identified do not have that religious affiliation. Similarly, hard to place pupils with a religious affiliation will not necessarily be placed at a school of the same faith if this might mean the school in question being required to take a disproportionately large number of Fair Access pupils

3.4 Pupils within the categories outlined in **bold**, may by their nature present with challenging behaviour and therefore these categories will be dealt with by the Inclusion Team. All other categories are dealt with by the Fair Access Team.

Section 4: Children Looked After

- 4.1 This protocol will not apply to a looked after child or a previously looked after child as there is a **National** expectation that these children **must** be admitted as outlined above under the School Admissions Code.⁶
- 4.2 The upmost priority is given to Children Looked After, residing within Hertfordshire, even when the child is placed within Hertfordshire by another Local Authority. Any placements should be made as quickly and as smoothly as possible.
- 4.3 Any admission of a Child Looked After should be undertaken with the support of the Virtual School. Once a school place has been agreed, schools must liaise with their Virtual School Education Adviser and the Social Worker who holds Parental Responsibility for this child. Where this CLA admission also meets the thresholds for the Fair Access Protocol then the Fair Access Officer and Virtual School Education Adviser will work in partnership to ensure appropriate support is in place for the student.
- 4.4 Refusal to admit and undue delays in admission of Children Looked After will be referred to the Adjudicator (LA Schools) or the Secretary of State (Academies). Powers of direction as specified in the School Admissions Code will apply and are further outlined below.⁷
- 4.5 Refusal to admit previously looked after children will trigger the Fair Access Protocol escalation procedure.⁷

Section 5: Process of identifying a suitable school

- 5.1 If the Fair Access and Inclusion Teams assess that the pupil fits the Fair Access criteria according to the definitions above, finding suitable educational provision will become the responsibility of the relevant team, who will take ownership of the case. Such acceptance automatically means that this protocol will be invoked.
- 5.2 The Fair Access or Inclusion Officer will nominate a school for each Fair Access pupil based on the information in respect of local schools and will consider:
- the number of Fair Access pupils of the same category that schools have recently admitted to ensure that there is as even a distribution of these pupils as possible across all the schools in the area
 - the number of hard to place pupils of the other categories that schools have recently admitted to ensure that there is as even a distribution of these pupils as possible across all the schools in the area
 - the number of hard to place pupils from each of Groups A and B (as described) already admitted by schools during the academic year to ensure that, as far as possible, each school of a given area admits an appropriate share of pupils from each Group
 - the stated preference(s), if any, of the parent(s)/carer(s)
 - the home to school journey distance and whether or not it would be appropriate for the pupil to attend a school that was either in or not in his/her immediate locality
 - the number of children that have been permanently excluded from or subject to a managed move to other schools or ESC during that academic year for each school
 - the number of permanently excluded children and children subject to a managed move that each school has admitted during that academic year

^{6&7} *School Admissions Code DfE Dec 2021: pt 6, Section 1.37,3.12, 3.26, also Promoting the education of looked-after children and previously looked-after children: Statutory guidance for local authorities DfE February 2018, pts 16-17, p.13, The designated teacher for looked-after and previously looked-after children: Statutory guidance on their roles and responsibilities, DfE February 2018, p.10.*

- the specific Year groups into which hard to place pupils have been admitted during that academic year
- the context of each school's circumstances based on evidence via government performance tables
- representations made in advance by schools to avoid placing hard to place children in specific Year groups (which would need to be supported by evidence of the case)
- the OFSTED report for each school
- considerations as to the appropriateness of schools in relation to the profile of the child in question, e.g. the child's interests and the schools' specialisms
- a consideration of the number of children with Education and Health Care Plans on roll at each school
- the number of pupils entitled to Free School Meals for the previous academic year
- the number of Exceptional Needs Funded pupils within that academic year
- the number of Children Looked After that the school have taken within that academic year
- the ratio of in year admissions within that academic year in relation to the total number of pupils on roll.
- the ratio of Education Support Centre outreach casework in relation to the total number of pupils on roll

5.3 From a consideration of the above information, the Fair Access or Inclusion Officer will be able to clearly evidence the reason for the approach to a particular school, and in so doing ensure fairness of approach across a local area as required. This information therefore may include comparative data from the other local schools to evidence the approach.

5.4 However, it may not always be possible to reconcile each and every factor mentioned above and thus there may well be an element of "best fit". The Fair Access or Inclusion Officer will, however, do his/her utmost to satisfy as many of the criteria mentioned above as possible.

Section 6: Process of approaching the identified suitable school

6.1 The relevant team will contact the Fair Access child's most recent provider of education (and, if necessary, previous providers) to request background information that may be of assistance to a future provider.

6.2 Once a school has been identified by the Fair Access or Inclusion Officer, the Officer will contact the school with a formal request to admit the child by email and will advise on the reasons for the request to admit. This will be done immediately to alert the school to the need for a place, even if the previous providers of education have not responded to the request for information. This information will be forwarded by the relevant team at the earliest opportunity.

There is an expectation that the school will agree to the request apart for a number of exceptional circumstance outlined below. In any event, schools should respond within three days of the approach by the Fair Access or Inclusion Officer to avoid delay in the process of finding suitable education for the child.

6.3 Where necessary the details of any support package will then be agreed. Where appropriate, this may include the application of additional funding within the limits of available resources to contribute towards costs incurred as part of fair access process.

- 6.4 In some cases, an initial meeting may be arranged at the earliest opportunity to involve (at least) the child, the parent(s)/carer(s), a representative of the school. This will be typical in the case of a permanently excluded child or one being transferred as the result of a managed move. Other professionals may also be included, being mindful of the need to balance the need for their attendance against the creation of a situation which the child may find overwhelming.
- 6.5 With any Fair Access admission, the officer's role is to clarify any issues around the admission (e.g. transport arrangements, matters of uniform), agree actions to be taken by the parties involved, determine an admission date within the specified timescales, and assist the school in acquiring any further resources identified as being needed.
- 6.6 The school will inform the Fair Access Team that the admission has taken place on the date specified.
- 6.7 The Fair Access Team will keep suitable and appropriate records which will track progress through the various stages of the process for all children dealt with under the protocol.

Section 7: The Inclusion Panel

- 7.1 The Inclusion Team has responsibility for managing and chairing the Inclusion Panel on a regular basis.
- 7.2 These panels consist of an Inclusion Gateway Officer, ESC representative/s, Youth Connexions representative, and possibly Educational Psychology representative. Secondary aged pupils and their parent(s)/carer(s), may be invited to the panels to discuss the educational needs of their child, consider ways forward and have a clear action plan/outcome.
- 7.3 There are four types of pupil who may attend the Inclusion Panel:-
- certain complex in year applications
 - pupils at risk of permanent exclusion and where the school have exhausted all internal and external support evidenced via the **Inclusion Referral Form and Hertfordshire Emotional Wellbeing and Behaviour Strategy**, and are therefore identified as in need of a managed move (see Section 8 below)
 - pupils who have been permanently excluded and discussion is necessary regarding their Day 6 provision requirement
 - pupils who have been permanently excluded and are now ready to return to mainstream education
- 7.4 The panel will take account of the circumstances of the individual pupil, as well as which school will be best able to meet their needs. If the panel agree the pupil is not ready for admission to mainstream school, alternative provision may be offered to parents.
- 7.5 For primary aged pupils, each DSPL area has arrangements for a local behaviour panel or locality arrangements for pupils at risk or who have been permanently excluded. Inclusion Officers will be involved in such arrangements

Section 8: Managed moves (Category 4 of the Fair Access Protocol)

- 8.1 The term “managed move” refers to the transfer of a pupil who is at serious risk of permanent exclusion from one school to another. Managed moves are intended to provide a way to avoid the need for permanent exclusion in cases where a full range of inclusion strategies has been applied and these have not been lastingly effective in line with the **Hertfordshire Emotional Wellbeing and Behaviour Strategy 2020-23**.
- 8.2 The Managed Move Protocol 2019 outlines the full procedure and provides schools with a template model to undertake the process. This can be found at the link below:-
- <https://www.hertfordshire.gov.uk/services/schools-and-education/school-admissions/in-year-admissions-change-schools-during-the-year/in-year-admissions-change-school-during-the-year.aspx>
- 8.3 A managed move may be direct, i.e. from one school to another, or indirect, i.e. via the local ESC.
- 8.4 For in year applications for children who are currently on roll at another school and meet the Fair Access Protocol, the current school will be sent an email notification to advise that it is being dealt with as a **managed move**.
- 8.5 The purpose of a managed move to another school is to enable a pupil at serious risk of permanent exclusion the opportunity of a fresh start in a new school. Managed moves should only be done with the full knowledge and cooperation of all the parties involved, including the parent(s)/carer(s), the schools involved and the LA, and in circumstances where it is agreed to be in the best interests of the child concerned. Parent(s)/carer(s) should never be pressured into removing their child from a school under threat of permanent exclusion, as specified in the DfE document “Exclusion from Maintained Schools, Academies and Pupil Referral Units in England”. Parent(s)/carer(s) will be informed that there is no guarantee that a request for a managed move will be approved.
- 8.6 A managed move may not be invoked in the case of a child who is not at serious risk of permanent exclusion. In particular, parent(s)/carer(s) will not be allowed to use a managed move as a means of achieving their preference for a certain school.
- 8.7 It is anticipated that all schools will assist each other wherever possible and be willing to both accept as well as suggest pupils for managed moves. Schools should refer such cases to the Fair Access Team via the **Inclusion Referral Form** where it can be evidenced that a full range of inclusion strategies have been attempted and been found to be ineffective, in line with the **Hertfordshire Behaviour Strategy**.
- 8.8 This will be passed on to the school to which it is proposed that the pupil is transferred. The parent(s)/carer(s) will also be contacted to ascertain their view on the proposed move and written consent must be obtained for the process to continue.
- 8.9 All parties, including the child, the parent(s)/carer(s) and representatives of both schools concerned will typically be invited to a meeting of the Fair Access Panel to discuss the issues involved and way forward.
- 8.10 There is an expectation that any remaining AWPU will pass from the original school to the new school identified to support the pupil's reintegration into school

Section 9: Exceptional circumstance for school refusal to admit a pupil under the Fair Access Protocol

- 9.1 There are limited exceptional circumstances when the admissions authority for a school can legitimately refuse admission. Children should be admitted in all other circumstances.
1. Exceptional physical illness of a pupil - where an established risk assessment for a pupil with a serious illness can be evidenced to show that an admission may pose a serious risk to their health and safety e.g. that the child may suffer fatal injury due to potential behaviour issues of pending admission. Also due to a child wheelchair user, or a child needing a 1:1 Teaching Assistant, the classroom size then becomes hazardous to pupil safety.
 2. Exceptional breakdown in the relationship between the school and the family. For example where a pupil may be affected by the past death of a sibling within that particular school.
 3. Where the LA has asked a school to admit pupils under the Fair Access Protocol from the same year group within the same term.
 4. Infant Class Size Limits (except for Fair Access Protocol Category 14)
 5. Where a child has been permanently excluded from two different schools and the last exclusion is less than two years ago and the child was not reinstated by the Governing Body⁸
 6. Where the child has been permanently excluded from the school in question
 7. Where the school has a particularly high proportion of children with challenging behaviour or previously excluded children **and** one or more of the following exceptional circumstances exists and can be evidenced via published data:
 - the school is judged as 'inadequate' or has recently come out of this category**AND/OR**
 - where fewer than 50% of pupils achieve expected standard in reading, writing and maths for three or more consecutive years.
- 9.2 When the governing body or the admission authority (where this is not the LA itself) of a school wishes to refuse admission, they will put forward a case for refusal based on the circumstances above. In these exceptional cases, the LA will agree with the school.

This provision does not apply to a Child Looked After, a child previously looked after or a child with an Education and Health Care Plan naming the school in question as these children MUST be admitted as outlined in Section 4 above.

⁸ School Standards and Framework Act 1998 Section 87

Section 10: Escalation Procedures

- 10.1 If a school fails to respond, causes undue delay or refuses to admit a pupil within 5 school days of being asked to take a pupil under the Fair Access Protocol, or refuses to admit a Child Looked After, the case will be escalated to the Senior Manager who will liaise with the school and assess whether support can be located to mitigate the needs of the child. This may involve advice regarding the redeploying of existing resources or the negotiation of additional support or resources. The school will agree to admit the child or will advise the Senior Manager that it still wishes to refuse admission.
- 10.2 Where the school still refuse to admit, the Senior Manager will fully assess the circumstances of the case and will proceed via the three ways below:-
1. Request the Fair Access Team secure an alternative school place at another local school.
 2. Liaise with the school in question to resolve the block to the admission.
 3. Where these discussions are unsuccessful, the Senior Manager will discuss with other senior colleagues for agreement to direct within 15 school days from the date of approach to the school.
- 10.3 Where the LA remains of the view that the school is the most appropriate placement and the reasons put forward for refusal are not legitimate, it will direct the school to admit. For academies, the decision will be whether to seek a direction to admit from the Secretary of State for Education.⁹

Section 11: Direction

- 11.1 Unless a child meets the criteria allowing for refusal, it must remain the overriding responsibility of the LA to secure admission under the Fair Access Protocol, and the Fair Access Team will attempt to do this through consensual means as outlined above.
- 11.2 Where local resolution cannot be achieved with the school via this protocol, Hertfordshire County Council still retains a statutory responsibility to ensure that state-funded education is provided for every resident child of statutory school age who meets the Fair Access Protocol. Therefore the Local Authority may seek direction.⁹ The intention is for direction to be a last resort.
- 11.3 It is expected that in any case where direction is considered, the Local Authority and the school will have been in discussion to assess the needs of the child and why the school does not feel it can meet those needs as outlined in the Escalation Procedure above.
- 11.4 Procedures for different types of school:
- Direction to a maintained school**
1. The Local Authority can only make such a direction in respect of a child in the local authority's area where every school within a reasonable distance* has refused entry.
 2. Before deciding to give or seek direction, the Local Authority will consult the Governing Body of the school, the parent of the child and the child.
 3. The Fair Access Team will advise the parent/carer regarding the education provision the child will receive whilst discussions to direct a school are taking place.

⁹ The Schools Admission Code 2021 summarises the powers of direction given to Local Authorities under Sections 96 & 97 of the Education Act 1998, and the differing requirements in relation to admissions to Academies

Direction to a VA or Foundation school

1. The Local Authority can only make such a direction in respect of a child in the local authority's area where every school within a reasonable distance* has refused entry.
2. Before deciding to give or seek direction, the Local Authority will consult the Governing Body of the school, the parent of the child and the child.
3. The Fair Access Team will advise the parent/carer regarding the education provision the child will receive whilst discussions to direct a school place are taking place.
4. The Governing Body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body must tell the local authority.
5. If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school must admit the child.
6. The Local Authority must not make a direction to a maintained school until the 15 days have passed and the case has not been referred.

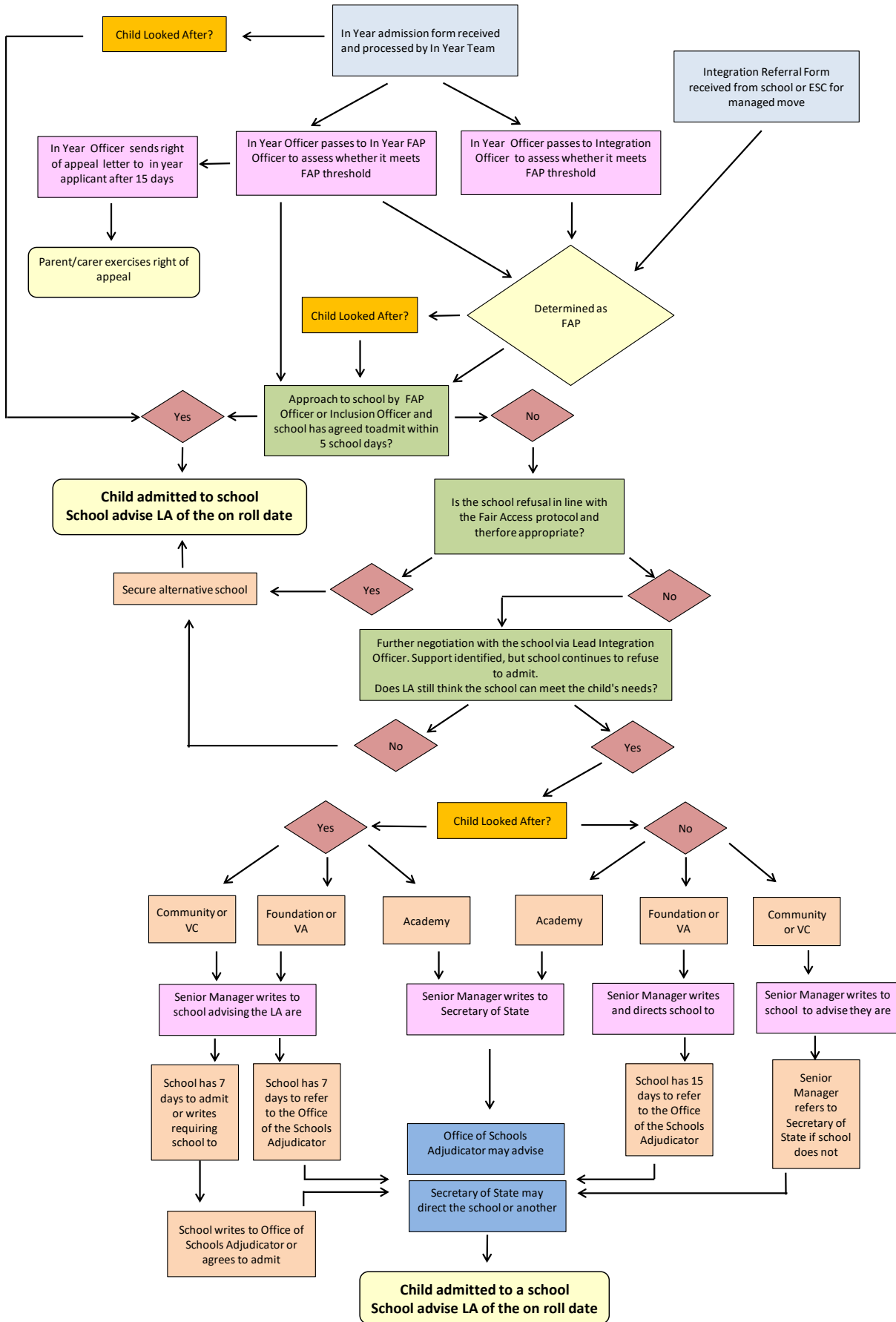
Direction to an Academy

1. The Local Authority will only make such a direction in respect of a child in the local authority's area where every school within a reasonable distance¹⁰ has refused entry.
2. The Local Authority will request the Secretary of State (via the EFSA) to intervene and direct an academy to admit under the academy's funding agreement.
3. Before deciding to give or seek direction, the Local Authority will consult the Governing Body of the school, the parent of the child and the child if they are over compulsory school age.
4. The Local Authority will make a request for a direction by the Secretary of State to the EFSA using the template at **Appendix 3**.
5. On requesting a direction from the Secretary of State, the Senior Manager on behalf of the LA must provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner in line with the Fair Access arrangements outlined in this protocol. It must set out the Academy's reasons for refusal and the LA response as to why it still considers the Academy to be the appropriate place for the child.
6. On receipt of a request to direct, the EFSA will inform the Academy that it has received a request for a direction. The letter will ask the Academy to provide any evidence in addition to that which has already been supplied to the EFSA that the process has not been properly applied.
7. The Academy will have seven calendar days to respond.
8. The EFSA will also consider whether the Academy has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other local schools having regard to whether due process as outlined in the Fair Access Protocol, has been applied appropriately.

The decision of the Secretary of State or Schools Adjudicator is binding.

¹⁰ 'Over reasonable distance' is defined as over statutory walking distances i.e. more than 2 miles (3218 m) from home for children aged under 8, and more than 3 miles (4827 m) from home for children aged 8 and over

Appendix 1: Process flow chart



Appendix 2: School Attendance Orders (Cat 5 of the Fair Access Protocol)

Background

Local authorities have a duty under **Section 436A, Education Act 1996** to make arrangements to identify children of compulsory school age who are not registered pupils at a school and are not receiving suitable education otherwise (EHE).

School also have responsibility in ensuring compliance and support with this duty. This is undertaken through our established Hertfordshire County Council notification of **'Removal of a pupil from roll'**, and through notification within 5 days of all school admissions via the SeAM database.

Schools that are not part of HCC's In Year coordinated scheme must ensure that they notify the HCC In Year team of any applicants that they are unable to place to ensure that these children are not left out of school.[footnote ref] The **Working together to Safeguard Children** statutory guidance provides advice on inter-agency working to safeguard and promote the welfare of children.

Context

The Local Authority is obliged to take enforcement measures where it is established that there is no suitable education is in place for a child of statutory age, and issue a **School Attendance Order (Section 437, Education Act 1996)**

In most cases, the situation is often resolved by the **Children Missing Education Officer** who liaises with these identified families to find a solution prior to issuing any order.

However, a number of cases each year require the Local Authority to issue a School Attendance Order. The numbers of such cases are comparatively low (four in total across Hertfordshire in 2016-17) Whilst the need for School Attendance Orders is low, the impact can be significant if an entrenched absence pattern continues. These children are therefore considered under one of the **Hertfordshire Fair Access category 5: 'Children who have been out of education for one month or more where it can be demonstrated that there are no places available at any school within a reasonable distance of their home'** (excluding children with an allocated school place which the parent has rejected)

It is recognised that these children are likely to place additional burden on a school's resource.

General School Processes for Pupil Absence

All pupils on roll at a school:-

In usual circumstances where a pupil is not attending school regularly, the school will make enquiries regarding the child's whereabouts via School Comms text system, telephone contact, email and letters to parents. The school may also wish to refer pupils with persistent absence levels to the Local Authority Attendance Team for further enquiry and support. These procedures may take place for all pupil absence.

If a pupil is not attending the school regularly, the parent/carer may be liable for prosecution by the Local Authority Attendance Team under the Education Act 1996 Section 444 (1 and 1a) for failing to ensure their child's regular attendance at school.

Pupils on roll at a school but whereabouts unknown:-

Schools and the Local Authority Attendance Team have responsibility for 'joint reasonable enquiry' to be undertaken when a pupil is not attending school regularly and when their whereabouts is unknown. This involves enquiry within the local community and/or with family members, and any professionals that may be known to the family. This process is common to every child on roll as part of the Removal from Roll procedure, with or without a School Attendance Order.

If after 20 school days the pupil's whereabouts have not been established with this level of enquiry, the school complete the Removal from roll form and this is raised with the Local Authority Children Missing Education Officer (CME). The CME Officer will then make further enquiry.

Pupils with a School Attendance Order:-

When a School Attendance Order has been issued, the parent is required to '**register**' the child at the named school. 'Registering' a child can be defined as the date when any agreement between the school and parent/carer took place in respect of a start date. This may take place through correspondence, telephone discussion or in person. Many schools will have admission meeting where parents complete various documentation, and a start date is agreed. This is the date of **registration**.

If a pupil on roll who has a School Attendance Order is registered and not attending regularly, as with any pupil, the parent/carer may be liable for prosecution by the Local Authority Attendance Team under the Education Act 1996 Section 444 (1 and 1a) for failing to ensure their child's regular attendance at school.

However, previous evidence relating to the Local Authority issue of the School Attendance Order can be used for a fast track prosecution in order to expedite the situation, and therefore schools should raise this matter promptly with their area Local Authority Attendance Team.

Pupils not on roll when a School Attendance order has been issued for that school :-

In the case of the pupil with a School Attendance Order, where the parent/carer **fails to register** the child and the child is not receiving suitable education otherwise, the parent/carer is liable for prosecution for failure to comply with the School Attendance Order (Section 443, Education Act 1996)

Again, in order to expedite the situation for pupils with a School Attendance Order, previous evidence relating to the issue of the School Attendance Order can be used for a fast track prosecution. This process would be undertaken by the Local Authority Children Missing Education Officer (CME).

*Note: This is different from the section 444 offences in that the child is **not** on roll for prosecutions under Section 443 but **is** on roll for prosecutions under Section 444.*

Procedure of securing a school place for a School Attendance Order

As part of Fair Access procedures, the Fair Access Officer will take the following matters into account in the following order before approaching a school:-

1. The nearest school to the child's home address, or the nearest school that has not admitted a School Attendance Order pupil during the academic year (if the nearer schools were the last schools in the area to have admitted SAO pupils)

The children to whom these procedures will apply are more likely to attend a local school than one which is further away. Naming a school that is not near the home address on an SAO would likely be called into question by the magistrate and difficult to justify if the LA

needed to go to court to prosecute for non-attendance.

2. The pupil would not need to be placed on roll until and unless the parents had registered the child at the school.
3. If a child is admitted to a school as a result of being named on a School Attendance Order, this would be regarded as an admission under category 5 of the Fair Access Protocol, (children who have been out of education for two months or more) and recorded as such in the FAP statistics that are regularly distributed to schools.
A school will not be asked to take another pupil as a result of being named on a School Attendance Order during that academic year.
4. The Fair Access Team will aim to offer additional funding to support the reintegration process and education needs of the pupil.

Appendix 3: Staged letters for Fair Access Protocol

1. Letter/email to school requesting a school place

Dear Head teacher,

We have received an In-Year application form for a **[year group]** child and the pupil meets the threshold for the Fair Access Protocol under

[Category of Fair Access Protocol outlined]

We would record this admission under the Fair Access Protocol and the admission would be reflected in the statistics that are published termly and reported to the DfE.

As a result of this admission, we would be less likely to approach you about another child in the same Year group, although we cannot guarantee this.

Please see below the reason for the admission to this school

[Reasons as outlined in Section 5]

[For KS1 only Category 14:

Your school would not need to implement any qualifying measures as the admission of this child is determined as an 'exception' to legislation i.e. Infant Class Size (section 2.15 of the School Admissions Code)]

[Where the school approached is also a preferred school on the in year application:

We also need to advise that as the parent has ranked your school as a preference on their in year application form, please be aware that if you do not respond within 15 working days, the parent will be entitled to appeal]

I have attached the Referral form for this pupil which outlines the pupil's additional needs and include a link to the Fair Access Protocol for your information:

<https://www.hertfordshire.gov.uk/services/schools-and-education/school-admissions/in-year-admissions-change-schools-during-the-year/in-year-admissions-change-school-during-the-year.aspx>

Should you have any questions or wish to speak to me over the telephone, my direct number is 0000 000000

I look forward to hearing from you.

Kind regards,

Fair Access Officer

2. Letter to local schools advising of an unplaced child when identified school has failed to admit/failed to respond

Dear Head teachers,

We currently have a child without a school place in the local area who meets the threshold for the Fair Access Protocol under

[Category of Fair Access Protocol outlined]

The local school identified has not been able to offer a school place, and therefore in line with the statutory legislation, we are approaching all other local schools to attempt to resolve this situation and very much hope we can reach an agreement.

Please can I therefore request that a school place be made available under the terms of Section 10 of the Fair Access protocol

If we are unable to secure a school place for the child, then we will ask the Secretary of state to advise further. This could lead to the direction for the initial school we approached, or direction to another local school.

I have attached the Referral form for this pupil which outlines the pupil's additional needs and I attach a link to the Fair Access Protocol for your information:

<https://www.hertfordshire.gov.uk/services/schools-and-education/school-admissions/in-year-admissions-change-schools-during-the-year/in-year-admissions-change-school-during-the-year.aspx>

Should you have any questions or wish to speak to me over the telephone, my direct number is 0000 000000

I look forward to hearing from you.

Kind regards,

Fair Access Officer

3. Letter to school advising the case is being escalated to the Senior Manager

Dear Head teacher

I am writing to confirm that you have refused admission via the Fair Access Protocol Cat X for [child's name]/failed to respond to a request to admit via the Fair Access Protocol Cat X for [child's name]

Based on the evidence in my previous email dated [xx/xx/xx] we have requested that a school place should be made available under the terms of Section 5 the Fair Access Protocol.

[Reasons as outlined in Section 5 – reasons in initial approach]

Due to the [school's refusal/failure to respond], I have emailed the Head teachers within your local group to identify whether or not they are able to offer a school place. I regrettably have to advise that they have refused admission for this child.

I note that you have advised us of the following reasons why you are unable to admit

[Reasons as outlined in Head teacher emails, correspondence and telephone discussion]

I am not aware that this child's circumstances are such that there is a legitimate reason to refuse admission, as detailed in Section 9 of Hertfordshire's Fair Access Protocol.

In line with the Fair Access procedure, I have therefore referred the matter to the Senior Manager who will contact you within the next 3 days to discuss further.

I attach a link to the Fair Access Protocol for your information:

<https://www.hertfordshire.gov.uk/services/schools-and-education/school-admissions/in-year-admissions-change-schools-during-the-year/in-year-admissions-change-school-during-the-year.aspx>

Kind regards,

Fair Access Officer

Appendix 4: Equalities Impact Assessment Sept 2021

Title of service / proposal / project / strategy / procurement you are assessing	Fair Access Protocol and procedures
Names of those involved in completing the EqlA	Deborah Roberts
Head of Service or Business Manager	Glenda Hardy
Team/Department	Fair Access Team, School Admissions and Transport
Lead officer contact details	Deborah Roberts
Focus of EqlA – what are you assessing?	<p>Aim of service:-</p> <ol style="list-style-type: none"> To secure educational provision in timely fashion for children who fall within the scope of the Fair Access arrangements and to keep appropriate records of this work <p>Reason for change:</p> <ul style="list-style-type: none"> Statutory changes within the new School Admissions Code Sept 2021 <p>Objectives of new Fair Access Protocol:-</p> <ul style="list-style-type: none"> To ensure the local authority comply with statutory requirements To ensure all school contribute to the Fair Access Protocol
Stakeholders	<p>Primary stakeholders:-</p> <ul style="list-style-type: none"> Children, young people of statutory school age who fall within the remit of the Fair Access Protocol and their families Fair Access Officers, Inclusion Officers and wider School Admissions and Transport Team Schools <p>Others:-</p> <ul style="list-style-type: none"> All HCC departments and other partners who interface with the Fair Access Team, such as ESCs, Primary Support Units, Virtual School, Asylum, Refugee and Travellers Team, Attendance Improvement Teams, IFST, SEN Team, Independent Appeals Panels

2.List of data sources used for this EqlA

Title and brief description	Date	Gaps in data
Fair Access area tracking spreadsheets	2018-21	
Logged letters and staged complaints procedure	2018-21	
Area Head teacher meetings	2018-21	
HASSH & PHF	2018-21	
LA report to adjudicator	Jun 2021	

FAP statistics showing distribution across local areas	2018-21	
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3. Analysis and assessment: review of information, impact analysis and mitigating actions

Protected characteristic group	What do you know? What do people tell you?	What does this mean – what are the potential impacts of the proposal(s)?	What can you do?
Age	Fair Access forms part of Hertfordshire County Council's In-Year school admission arrangements and applies to all children and young people of statutory school age.	The County Council has a statutory responsibility to provide education for every resident child of statutory school age who meets the threshold for the Fair Access Protocol. It is not anticipated that there should be any disproportionate impact of the proposal on age. The child's age is only ever used to determine which year group a child is admitted into. Parent(s)/Carer(s) can make an out of year group request and this will be considered on its own merits and through the Out of Year Group Panel and in line with DfE requirements.	No mitigation is currently required. Parent(s)/Carer(s) can continue to make out of year group requests where required.
Disability	The County Council has a duty to be compliant with equalities legislation. Data particular to disability is not collected or kept as part of the In-Year Admission/Fair Access Protocol procedures.	It is not anticipated that there should be any significant detrimental impact of the proposal on disability. Children with serious disabilities or serious medical conditions continue to be included as a specific category in the Fair Access Protocol as a DfE required category and thus are given priority. ISL specialist services working with children with disabilities and SENDIASS advisory services are advised of the Fair Access Protocol to help families make appropriate and timely requests for school places. Access to specialist interpretation services (e.g. BSL) can be accessed to support parent(s)/carer(s) in	No mitigation is currently required. Specialist services working with parent(s)/carer(s) and those children with disabilities will continue. Fair Access will continue to operate close working relationships with these services to support families impacted by disability. Rule 2 procedures will continue to operate. Consideration of translation of the Fair Access Protocol into Braille should this be required.

		<p>understanding and accessing the Fair Access Protocol.</p> <p>For those children with a disability who may not meet the high threshold for the Fair Access Protocol, the County admission arrangements have within it a rule 2 process whereby any relevant social/medical needs can be raised and considered.</p>	
Gender reassignment	<p>The parent(s)/carer(s) of children undergoing gender reassignment may choose to request a new school place for their child. Data particular to gender reassignment is not collected or kept as part of the In-Year Admission/Fair Access Protocol procedures.</p>	<p>It is not anticipated that there will not be an impact on children undergoing gender reassignment. Whilst such children are not specifically included as a Fair Access Protocol category. However, parent(s)/carer(s) can make an application to attend a specific school because of gender reassignment through the existing In-Year and Rule 2 (social/medical) processes.</p>	<p>Regular In-Year application and associated Rule 2 procedures will continue to apply.</p>
Pregnancy and maternity	<p>The parent(s)/carer(s) of children undergoing pregnancy/maternity may choose to request a new school place for their child. Data particular to pregnancy and maternity is not collected or kept as part of the In-Year Admission/Fair Access Protocol procedures.</p>	<p>It is not anticipated that there will be an impact on children undergoing pregnancy and maternity arrangements. Whilst children undergoing pregnancy and maternity are not included as a specific Fair Access Protocol category, Parent(s)/carer(s) can make an application for a school place through the existing In-Year and Rule 2 (social/medical) processes. Specialist ISL services provide support and ESTMA can offer education to pregnant school girls where relevant medical evidence is provided.</p>	<p>Regular In-Year admission, associated Rule 2 procedures and specialist services to continue.</p>
Race	<p>There is a need to ensure that that the Fair Access Protocol can be accessed and understood by those whose first language is not English.</p> <p>Children and families from the travelling community can be highly mobile and parent(s)/carer(s) may</p>	<p>No anticipated impact in relation to race is envisaged. Parent(s), carer(s) and pupils can have access to Language Line Services either by telephone or face to face. In addition a written translation service can be offered to parent(s)/carer(s) where English is not their first language. Children who are part of the travelling community are</p>	<p>Specialist interpretation services will continue to be available to parent(s)/carer(s). The Fair Access Team's continued close working with the specialist ISL Teams involved in support families and children from the travelling community, refugee and asylum seeking backgrounds.</p>

	<p>need to make a request for a change of school place for their child.</p>	<p>included as a specific category in the Fair Access Protocol as a DfE required category and thus are given priority.</p> <p>Refugee and asylum seeking children are included as a specific category in the Fair Access Protocol as a DfE required category and thus are given priority.</p> <p>ISL specialist services working with children from travelling communities and those from asylum seeking and refugee backgrounds are provided to support parent(s)/carer(s) make appropriate and timely requests for school places.</p>	<p>Usual In-Year admission, including Rule 2 arrangements, to continue.</p>
<p>Religion or belief</p>	<p>Religion or belief can be a determining factor for parent(s)/carer(s) when seeking school places for children.</p> <p>Data particular to religion or belief is not collected or kept as part of the In-Year Admission/Fair Access Protocol procedures.</p>	<p>It is not anticipated that there will be a significant impact in relation to religion or belief.</p> <p>The Fair Access Protocol will endeavour to take account of the religious ethos of a particular school in respect of an admission (strong aversion or desire). Where possible and where indicated, pupil (and parent(s)/carers) with a religious affiliation will be matched to a school of the appropriate faith.</p> <p>Where a preference school cannot be agreed through the Fair Access Protocol, parent(s)/carers(s) can make an application through the regular In-Year procedures.</p>	<p>Usual In-Year admission arrangements to continue.</p>
<p>Sex/Gender</p>	<p>Hertfordshire County Council is not the admitting authority for any school that admits pupils on the basis of sex.</p>	<p>There is no potential impact in relation to Sex/Gender.</p> <p>Under the Fair Access Protocol, account can be taken of a child's sex when considering admission to a school, particularly where indicated and in relation to matters of safeguarding.</p> <p>Where the school of</p>	<p>Usual In-Year admission arrangements to continue.</p>

		preference cannot be agreed through the Fair Access Protocol, parent(s)/carers(s) can make an application through the regular In-Year procedures.	
Sexual orientation	Parent(s)/carer(s) may wish to request a new school place based on the sexual orientation of their child. Data particular to sexual orientation is not collected or kept as part of the In-Year Admission/Fair Access Protocol procedures.	Applications made for children to attend a specific school because of sexual orientation (pupil or family member) can be considered through the existing and unchanged Rule 2 (social/medical) process. It is not anticipated at this stage that the proposals will have a detrimental impact.	Usual In-Year admission, including Rule 2 arrangements, to continue.
Marriage and civil partnership	The Fair Access Protocol applies to children of statutory school age and so marriage and civil partnership does not apply in relation to this group. The marriage/civil partnership status of a child's parent(s)/carer(s) is not applicable in relation to the securing of school places under the Fair Access Protocol.	There will be no impact in relation to marriage and civil partnership.	Mitigation is not required.
Carers	The Fair Access Protocol does not apply to Children Looked after as there is national expectation that these children be admitted under the School Admissions Code. The Parent(s)/carers(s) of children who are carers may choose to request a new school for their child.	Impact is not anticipated. Utmost priority is given to Children Looked After, residing within Hertfordshire, even when the child is placed within Hertfordshire by another Local Authority. The admission to school of a Child Looked After is taken with the support of the Virtual School and the parent/social worker who holds Parental Responsibility for the child. However, where a Child Looked After admission also meets the thresholds for the Fair Access Protocol then services will work in partnership to ensure appropriate support is in place for the child.	Duty to continue. Partnership working to continue. Named Fair Access Officer as the link person for CLA. Refusal to admit and undue delays in admission of Children Looked After will be referred to the Adjudicator (LA Schools) or Secretary of State (Academies). Powers of direction, as specified in the School Admissions Code, will be applied.

		<p>Children who are carers are included as a specific category in the Fair Access Protocol as a DfE required category and so are given priority.</p> <p>Where parent(s)/carers(s) have a caring responsibility, then an application for children to attend a specific school through the existing and unchanged rule 2 (social/medical) processes can be made.</p>	
<p>Other relevant groups Consider if there is a potential impact (positive or negative) on areas such as health and wellbeing, crime and disorder, Armed Forces community.</p>	<p>Children involved in crime, whose health and wellbeing are of concern and homeless children can be significantly disadvantaged.</p> <p>Hertfordshire County Council is committed to the Hertfordshire Community Covenant – a commitment to support active and retired Armed Forces community living and working in Hertfordshire.</p>	<p>There is no impact anticipated for those children where health and wellbeing are of concern or those children who may be involved in crime and disorder, homeless or part of the Armed Forces community.</p> <p>Children returning from the criminal justice system are included as a specific category in the Fair Access Protocol as a DfE required category and are given priority.</p> <p>Children who are homeless are included as a specific category in the Fair Access Protocol as a DfE required category and are given priority.</p> <p>The children of serving UK service personnel (including children of service families whose countries have a “Memorandum of Understanding” with the UK Home Office) are included as a specific category in the Fair Access Protocol and are given priority.</p> <p>For those children who do not meet the threshold for the Fair Access Protocol, the County admission arrangement has within it a rule 2 process whereby any relevant social/medical needs can be raised and considered.</p>	<p>The Fair Access Team will continue to work closely with those specialist ISL Teams supporting families and children who may be homeless or where there are concerns around crime and disorder, health and wellbeing.</p> <p>Usual In-Year admission, including Rule 2 arrangements, to continue.</p>

Opportunity to advance equality of opportunity and/or foster good relations

Under paragraph 3.14 of the School Admissions Code 2021, each Local Authority must have a Fair Access Protocol. The Protocol **must** be consulted upon and developed in partnership with all schools in its area. Once the Protocol has been agreed by the majority of schools in its area, all admission authorities **must** participate in it to ensure unplaced children and especially the most vulnerable, are offered a place at a suitable school as quickly as possible.

The new protocol makes specific statutory changes as follows:-

- Extending the mandatory categories of children who can be placed via the FAP to include
 - Children on a Child in Need/Child Protection Plan/with a named social worker.
 - Children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home.
 - Previously looked after children for whom the local authority has been unable to promptly secure a school place.
- Removing the ability for local authorities to introduce their own FAP categories. This will mean the loss of two current categories
 - Children in Year 11 from the Spring term onwards (earlier if presenting significant additional needs)
 - Children who have been out of education for two months or more
- Prohibiting the routine use of the Fair Access Protocol in place of the usual in-year admissions process. Schools must not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. All Fair Access cases (other than those referred directly by schools for Inclusion Panel or Managed Moves) will ordinarily have made an in year application. If an application meets the criteria for the Fair Access Protocol, the team will request a school place at any preference school with a vacancy via the In Year process prior to any further action. This means that all FAP would be given their opportunity to go through the In Year process in the first instance.
- Requiring that placement decisions need to be made within 20 school days of a child being referred to the FAP. This is now a mandatory requirement, so a school's 3 day response timescale is critical to ensure we comply with this requirement

Conclusion of your analysis and assessment - select one of the outcomes below and summarise why you have selected i, ii, iii or iv; what you think the **most important** impacts are; and the key actions you will take.

OUTCOME AND NEXT STEPS SUMMARY

- i. No equality impacts identified**
- No major change required to proposal
- No adverse equality impacts have been identified in the revised (September 2021) Fair Access Protocol.

ii. Minimal equality impacts identified

- Adverse impacts have been identified, but have been objectively justified (provided you do not unlawfully discriminate)
- Ensure decision makers consider the cumulative effect of how a number of decisions impact on equality
- No major change required to proposal

Not applicable

iii. Potential equality impacts identified

- Take 'mitigating action' to change the original policy/proposal, remove barriers or better advance equality
- Set out clear actions in the action plan in section 4.

Not applicable

iv. Major equality impacts identified

- The adverse effects are not justified, cannot be mitigated or show unlawful discrimination
- You must stop and remove the policy

[you should consult with Legal Services]

- Ensure decision makers understand the equality impact

Not applicable

Relevant Legislation

This appendix sets out the primary legislation most relevant to School Admission and Fair Access decisions, and to provide the source of footnote references in the body of the text:

Equality Act (2010)

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

School Standards and Framework Act (1998)

<http://www.legislation.gov.uk/ukpga/1998/31/contents>

School Admissions Code (2021)

[School admissions code - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/publications/school-admissions-code)

Annual Report of the Schools Adjudicator (2017)

<https://www.gov.uk/government/publications/osa-annual-report>

Fair Access Protocols: Principles and Process, Departmental Advice DfE (November 2012)

[Fair access protocols: advice for local authorities and school admission authorities \(publishing.service.gov.uk\)](http://publishing.service.gov.uk/government/publications/fair-access-protocols)

Children missing education: Statutory guidance for local authorities DfE (September 2016)

<https://www.gov.uk/government/publications/children-missing-education>

Promoting the education of looked-after children and previously looked-after children:

Statutory guidance for local authorities DfE (February 2018)

<https://www.gov.uk/government/publications/promoting-the-education-of-looked-after-children>