



City of  
**Stoke-on-Trent**

## **Fair Access Protocol**

### **Introduction**

- 1.1 The School Admissions Code 2021 states that each local authority must have a Fair Access Protocol 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.
- 1.2 Each local authority Fair Access Protocol must be agreed with the majority of schools in its area, and set out how, outside the normal admissions round, schools in the area will admit their fair share of children with challenging behaviour<sup>1</sup>, children excluded from other schools and children who arrive outside the admissions round who may have difficulty securing a school place. In these circumstances, admission authorities may, if necessary, admit above their Pupil Admission Number (PAN).
- 1.3 The operation of the Fair Access Protocol is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a school place under in-year admission procedures, even following the outcome of an appeal.

---

**<sup>1</sup>For the purposes of the Admissions Code 2021: “behaviour can be described as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or it is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate. We would expect this behaviour to significantly interfere with the pupil’s/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment”.**

- 1.4 Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities must process these applications in accordance with their usual in-year admission procedures. They must not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol.
- 1.5 The Code requires that all admission authorities must participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly and that no school takes more than its fair share of children with challenging behaviour. A list of the 32 admission authorities currently operating within the local authority area is set out at Appendix A.
- 1.6 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. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full. Local authorities must provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the Protocol will take place.
- 1.7 There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parents' views should be taken into account.
- 1.8 Where a governing board does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it must refer the case to the local authority for action under the Fair Access Protocol. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children.
- 1.9 Admission authorities must not refuse to admit a child thought to be potentially disruptive, or to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.
- 1.10 The Fair Access Protocol does not require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school.
- 1.11 No school - including those with places available – should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol.

## Scope

2.1 The Panel is established by Stoke-on-Trent City Council in line with the local Fair Access Protocol.

2.2 The Fair Access Protocol does not apply to a looked after child or one with Education, Health and Care Plan (EHCP) naming the school in question, as these children must be admitted.

2.3 Fair Access Protocols may only be used to place the following groups 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:

- children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- children from the criminal justice system;
- children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions
- children who are carers;
- children who are homeless;
- children in formal kinship care arrangements
- children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- children who have been refused a school place on the grounds of their challenging behaviour<sup>2</sup>;
- children for whom a place has not been sought due to exceptional circumstances<sup>3</sup>

---

<sup>2</sup> in accordance with paragraph 3.10 of the School Admissions Code 2021;

<sup>3</sup> The Admissions Code 2021 states that: It is for the local authority to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case.

- 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. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted;
- previously looked after children for whom the local authority has been unable to promptly secure a school place<sup>4</sup>

## Principles of the Fair Access Protocol

- 3.1 The Protocol is designed to work for the benefit of all children. All children should receive a high standard of education and care to help them fulfil their potential.
- 3.2 The Protocol will:
- be fair and transparent;
  - have the confidence of all schools;
  - acknowledge the needs of vulnerable young people;
  - respect parents' right to express a preference for the school which they wish their child to attend;
  - deal with the young people and their families sympathetically, quickly and with respect;
  - seek to minimise the time that young people are out of education; and
  - provide an equitable basis on which schools will be asked to admit a young person with challenging educational needs.
- 3.3 Pupils included in the Fair Access Protocol will take precedence over pupils held on waiting lists by admission authorities covered by this Protocol.
- 3.4 In processing appropriate outcomes for pupils under the Fair Access Protocol, recognition will be given to the number and impact of pupils already admitted to schools via this process during the course of the last three school years, numbers admitted in the relevant cohort, and the proportion of the school roll which they currently represent.

---

<sup>4</sup> **The Admissions Code 2021 states that: “In most cases use of the Fair Access Protocol should be unnecessary for a previously looked after child. We would expect the local authority to aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this. The local authority may consider swift 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”.**

- 3.5 Account will be taken of schools' records in excluding pupils. Schools which have a record of excluding a high number of pupils should be expected to reintegrate a higher number of pupils under the Protocol.

## **The Commitment**

- 4.1 All schools in Stoke-on-Trent will be party to the Protocol and support its implementation and meet all the deadlines for submitting documentation and admitting pupils.
- 4.2 Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place must be allocated for that child within 20 school days. Once they have been allocated a school place via the Fair Access Protocol, arrangements should be made for the child to start at the school as soon as possible.
- 4.3 The local authority will operate normal admissions procedures for children falling outside the Fair Access Protocol.
- 4.4 Schools will not say that they are full if asked to take a pupil under this Protocol.
- 4.5 All requests will be dealt with within the agreed timeframe.
- 4.6 The Fair Access Panel (FAP) will consider any case which has not been possible to resolve through agreement between all the parties involved. The Panel will be supported by all schools covered by this agreement on a rota basis. The constitution and terms of reference for the Panel are set out at Appendix B.

## **Procedures**

- 5.1 Once a child is thought to be covered by the Fair Access Protocol, the Admissions Team will ask for a copy of his/her school record and any information relevant to the child's placement. This will include information about incidents which have led to the conclusion that the child is difficult to place.
- 5.2 The authority will have made every effort to obtain the full information requested in 5.1. If this is not forthcoming, particularly from out-of-city schools, then the process will continue with whatever information is known.
- 5.3 The Admissions Team will seek the views of the Headteachers of any schools which are considered to be likely to provide a place for the child based on expected walking distances (2 miles primary, 3 miles secondary).
- 5.4 The Headteachers of the schools will respond to the request for comments within 7 working days.

- 5.5 In coming to a decision about the child's placement, the authority will take careful account of the views of the Headteachers and governing bodies of the schools. In particular, the authority will take account of any genuine concerns about a Fair Access admission; eg, a serious breakdown in relationships between the family and the school; a strong aversion by the family to the religious ethos of a school.
- 5.6 If one of the schools consulted agrees that the child should be admitted, the authority will inform the parent of the child's placement. If more than one school agrees to admit the authority will determine the most suitable outcome. The decision taken will be reported to the FAP Panel.
- 5.7 If all the schools consulted are reluctant to admit, the authority will make a recommendation on the most appropriate destination for the child and this will be reported to the following FAP. The recommendation of the authority will state the key reasons for the selection of the particular school taking into account the factors stated at 3.2 above.
- 5.8 The FAP will meet to consider recommendations made by the authority. The FAP will either accept the recommendations or suggest amendments. The authority will then notify the relevant schools of the FAP outcome.
- 5.9 Children who are in care to a local authority will be placed in the school of their carer's preference irrespective of the availability of places in the relevant age group. If it is considered there are exceptional circumstances, which may make a placement inadvisable, the case will be taken to FAP and the decision of the panel will be complied with.
- 5.10 If, following the outcome of the FAP, the decision is that the pupil should be admitted to a community or voluntary controlled school, the Director of Children's Services will write to the Headteacher accordingly. The governing body are under a duty to admit the child and will admit the pupil within 7 working days.
- 5.11 If, following the outcome of the FAP, the decision is that the pupil should be admitted to a voluntary aided school or foundation school, then the DCS will issue a direction under Section 96 of the School Standards and Framework Act. The governing body may appeal to the Adjudicator against such a decision. The school specified in the direction will admit the pupil within 7 working days of the direction being sent unless the governing body has decided to appeal or asked for the matter to be referred to the Adjudicator.
- 5.12 If, following outcome of the FAP, the decision is that the pupil should be admitted to an academy, then the DCS will write to inform the Principal of the academy of this decision and the academy will admit the pupil within 7 working days. If the academy refuses to admit, the authority will refer the matter to the Secretary of State for a decision.

- 5.13 The authority will deduct from the budget or invoice the excluding school an amount calculated in accordance with either a local agreement or the regulations.

## **Pupils not Ready for Mainstream Schooling**

- 6.1 Where the authority receives suitable evidence that a pupil is ready for a mainstream setting, the Fair Access Process can be used. Where a pupil has been excluded, the authority will meet its obligations under day 6 requirements and provide these or similar to such a time as the pupil is deemed ready to return to mainstream.
- 6.2 Where a pupil is otherwise out of education, possibly having newly arrived in the city, and is not thought to be ready for mainstream schooling, the authority will seek alternative provision rather than processing the application through FAP.
- 6.3 There may be occasions where a receiving school decides to support transition via its own use of alternative provision, but such an expectation will not impact on the authority's recommendations to FAP.

## **Retrospective In-year Fair Access Admissions**

- 7.1 Where, on admission of a child during the in-year process, information is subsequently received would have been considered as a Fair Access admission, the Headteacher may request a retrospective Fair Access Admission.
- 7.2 Any such requests should be made to the Admissions Team providing details of the new information received, evidence of issues which have arisen since the child was admitted to the school. If the authority agrees, then the admission will be recorded as a Fair Access admission.

## **Monitoring**

- 8.1 The FAP will receive regular reports on the numbers of children requesting places under this process. The reports will classify pupils by year group, gender and by reason (permanent exclusion, refugee, etc), and will record the action that is being taken to return the pupil to education.
- 8.2 A report will be prepared annually for the Adjudicator and others on the operation of the Protocol.

## **Reviewing the Stoke-on-Trent Fair Access Protocol**

In the event that the majority of schools can no longer support the principles and approach of the local Fair Access Protocol, they should initiate a review with the

local authority. The request for review should be made in writing, via the Chair of the Fair Access Panel. The existing Fair Access Protocol will remain binding on all schools in the local area until the point at which a new one is adopted.

# Appendix A

## Admission authorities operating in the Stoke-on-Trent local authority area (at June 2021)

- Academy Transformation Trust
- All Saints Catholic Collegiate
- The Alpha Academies Trust
- Carmountside Academy
- Christ the King Catholic Collegiate
- City Learning Trust
- The Co-operative Academies Trust
- Creative Education Trust
- The Crescent Academy
- Esprit Multi Academy Trust
- Frank Field Education Trust
- Glebe Academy
- Hanley St. Luke's CE(A) Primary Governing Body
- Inspirational Learning Academies Trust
- The Learning Village Academy Trust
- The Lighthouse Trust
- The New Guild Trust
- The Newman Catholic Collegiate
- Orchard Community Trust
- Ormiston Academies Trust
- The Societas Trust
- St. Bart's Multi Academy Trust
- St. Joseph's College Edmund Rice Academy Trust
- St. John's CE(A) Primary Governing Body
- St. Mark's CE(A) Primary Governing Body
- St. Mary's Anglican Academy
- St. Chad's Academies Trust
- The Sandon Trust
- The Shaw Education Trust
- Stoke-on-Trent City Council (for community and voluntary controlled schools:  
Ball Green Primary, Blurton Primary, Burnwood Primary, Clarice Cliff Primary  
Etruscan Primary, Heron Cross Primary, Hillside Primary, Holden Lane Primary  
Priory CE (C) Primary, Sandford Hill Primary, St. Paul's CE (C) Primary  
Willows Primary)
- Sutherland Primary Academy
- Woodard Academies Trust

# Appendix B

## Fair Access Panel (FAP) Constitution and Terms of Reference

### 1.0 Role

1.12 The Panel is established by Stoke-on-Trent City Council in line with the local Fair Access Protocol.

1.2 The role of the Panel is to:

- (a) have regard to the aims and principles of the Fair Access Protocol
- (b) consider and identify for each case referred:
  - appropriate maintained school
- (c) ensure that no school is asked to take an excessive or unreasonable number of pupils in relation to the nature of the pupils concerned.

### 2.0 Constitution

2.1 The Panel will be made up of a minimum of 5 representatives (at school SLT level) of Own Admission Authorities operating in Stoke-on-Trent – four secondary and one primary representative (to reflect broadly the nature of cases historically for consideration). The Panel will be quorate with three representatives.

These representatives will be elected annually via a process undertaken by the LA during the Summer Term, to apply from the start of the following academic year.

2.2 The Panel will be supported by LA officers from the following list:

- Admissions Manager; Strategic Manager – School Support; Strategic Manager – Pupil Achievement and Inclusion 0-19; Assistant Director – Learning Services

2.3 Meetings of the Panel will be administered by the LA. The LA will undertake to record the outcomes from the meeting.

2.4 The Panel will be chaired by one of the five representatives – and this will be determined at the first meeting of the academic year.

### 3.0 Meetings

3.1 The Panel will meet approximately fortnightly during term-time. The frequency of meetings may be adjusted with fluctuations in the caseload to be considered. Where an Own Admission Authority does not have an elected representative on the Panel, it may choose to have an observer attend the FAP meeting.

- 3.2 Panel members will declare any interest in any individually referred case, and be required to withdraw from any discussion on such a case.

# Appendix C

## Fair Access Flow Chart

