



City of
Stoke-on-Trent

Fair Access Protocol

Contents

1.	Introduction.....	2
2.	Scope.....	4
3.	Principles.....	5
4.	Commitment.....	6
5.	Process.....	6
6.	Retrospective credit.....	9
7.	Monitoring.....	9
8.	Reviewing the Protocol.....	9
	Appendix A Admissions authorities.....	11
	Appendix B Fair Access Panel - Constitution and Terms of Reference.....	12
	Appendix C Fair Access Flowchart.....	14

1. Introduction

- 1.1 Fair Access Protocols play a key role in helping to keep children safe. 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 Guidance issued by the Department for Education states that ‘FAPs should provide a fair and transparent system to ensure that all schools share the collective responsibility of helping the most vulnerable, by admitting their fair share of children being placed via the FAP. This includes supporting those children who have been permanently excluded from other schools and those who display challenging behaviour’. Referral to the FAP should be seen as ‘the last resort to secure a school place for a child’ as, where possible, ‘children should be placed in school through the usual In-Year admissions process in the first instance’.
- 1.3 The Local Authority’s Fair Access Protocol (the Protocol) must be consulted upon and developed in partnership with all schools in its area and agreed with the majority of schools. Once agreement has been reached, all admission authorities must participate in the Protocol and make available a representative authorised to participate in discussions; make decisions on placing children via the Protocol; and admitting pupils when asked to do so, even when the school is full. Admission authorities are listed in Appendix A.
- 1.4 The Protocol is to ensure that outside the normal admissions round no school, including those that have spaces available, is asked to take a disproportionate number of children with challenging behaviour¹, children permanently excluded from other schools or children who are placed via the Protocol.
- 1.5 When administering Fair Access Protocols, local authorities must provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children will take place.
- 1.6 The operation of the Protocol is triggered when a parent of an eligible child has not secured a school place under the usual In-Year admission procedures, even following the outcome of an appeal.

¹For 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”.

- 1.7 Eligibility for the 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 Protocol.
- 1.8 There is no duty on local authorities or admission authorities to comply with parental preference when allocating places through the Protocol, but parents' views should be considered.
- 1.9 Parents 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 Protocol. The fact that an appeal has been lodged for a child is not a reason to delay the Protocol process. Admission authorities should, therefore, be aware that where they refuse a child a school place and subsequently refer them to the Protocol, they may later be required to admit that child if an appeal is upheld. This would still be the case when an alternative school place is offered to the child via the Protocol.
- 1.10 As in the normal admissions round, where a school receives an In-Year application for a year group that is a normal point of entry (e.g. reception or year 7), they must not refuse to admit the child on the basis of their behaviour², unless the child has been permanently excluded from 2 or more schools, with the most recent exclusion being within the previous 2 years.³
- 1.11 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 Protocol. This will normally only be appropriate where the school has a particularly high proportion of children with challenging behaviour or previously excluded children.
- 1.12 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.
- 1.13 The Protocol does not require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school.

² Paragraph 3.9, School Admissions Code.

³ The twice excluded rule does not apply to the following children: children who were below compulsory school age at the time of the exclusion; children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so); children whose permanent exclusion has been considered by a review panel, and the panel has decided to quash a decision not to reinstate them following the exclusion; and children with education, health and care plans naming the school.

2. Scope

- 2.1 The Fair Access Panel (the Panel) is established by Stoke-on-Trent City Council in line with this Protocol.
- 2.2 The Protocol does not apply to a child with an Education, Health and Care Plan (EHCP) naming the school in question, as these children must be admitted.
- 2.3 The Protocol does not apply to a looked after child as these children must be admitted.
- 2.4 As the Protocol is intended to act as a safety net for the most vulnerable, it must only be used to place the following categories of children where the child is having difficulty 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 admissions process⁴. Therefore, other than for a child who a school has good reason to believe may display challenging behaviour and can be refused admission and referred to the Protocol (see paragraph 1.11), it is expected that if a school has a vacancy in the year group, then a place will be offered. The categories of children deemed vulnerable under this protocol are:
 - a) 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;
 - b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
 - c) children from the criminal justice system;
 - d) 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;
 - e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions
 - f) children who are carers;
 - g) children who are homeless;
 - h) children in formal kinship care arrangements⁵;
 - i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
 - j) children who have been refused a school place on the grounds of their challenging behavior and referred to the Protocol⁶;
 - k) children for whom a place has not been sought due to exceptional circumstances⁷

⁴ Example includes where an application has been made to at least one school and this has been refused, or the LA has confirmed that there are no places available at any school within a reasonable distance.

⁵ As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.

⁶ in accordance with paragraph 3.10 of the School Admissions Code 2021;

⁷ 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.

- l) 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;
- m) previously looked after children for whom the Local Authority has been unable to promptly secure a school place⁸

3. Principles

- 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 Protocol will take precedence over pupils held on a school's waiting lists.
- 3.4 In processing appropriate outcomes for pupils under the Protocol, recognition will be given to schools for the number and impact of pupils already admitted via this process a) during the course of the last three school years; b) admitted to the relevant cohort; and c) taking into account the proportion of the school roll that this intake represents.
- 3.5 Account will be taken of schools' records in excluding pupils⁹. Schools that have a record of excluding a high number of pupils should be expected to reintegrate a higher number of pupils under the Protocol.

⁸ 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".

⁹ Where a school excludes a child, the Local Authority will deduct from the school's budget, or will invoice the excluding school an amount calculated in accordance with either a local agreement or the regulations.

4. Commitment

- 4.1 All schools in Stoke-on-Trent will be party to the Protocol. This will involve supporting its implementation and meeting all procedural deadlines.
- 4.2 The Local Authority will operate the usual In-Year admissions procedures for children falling outside the Protocol.
- 4.3 Where it has been agreed that a child will be placed via the Protocol, parents will be notified of this by the Local Authority and a school place will be allocated for the child within **20 school days**. Once a school place has been allocated via the Protocol, arrangements for admission will be made by the school for the child to start **within 7 school days** of the offer being confirmed in writing by the Local Authority.
- 4.4 Schools will not say that they are full if asked to take a pupil under this protocol.
- 4.5 The Panel will consider any case which has not been possible to resolve through agreement between all the parties involved.
- 4.6 The Panel will be attended by representatives from all schools covered by this agreement on a rota basis. The constitution and terms of reference for the Panel are set out in Appendix B.

5. Process

- 5.1 It is expected that children who are in care to a local authority will be placed in the Stoke-on-Trent 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 that may make a placement inadvisable, the case will be taken to FAP and the decision of the panel will be complied with.
- 5.2 In cases where a child is referred to the Local Authority for admission through the Protocol, the Local Authority will verify eligibility before progressing the application. Background information obtained to confirm eligibility for Fair Access will be shared with the schools consulted.
- 5.3 The Local Authority will seek to obtain a copy of the child's school record and any information that may be relevant to the child's placement. This will include information that has led to the conclusion that the child is difficult to place. The Local Authority will make every effort to obtain full information, including information about any relevant incidents related to challenging behaviour, but, if this is not forthcoming; for example, from schools in other areas, then the process will continue with whatever information is known.

- 5.4 For children excluded from school, many of whom may be attending an alternative provision, where the Local Authority receives suitable evidence that a pupil is ready to return to a mainstream setting, the Fair Access Process can be used.
- 5.5 There may be occasions where a receiving school decides to support reintegration to mainstream via its own use of alternative provision, but such an expectation will not impact on the Local Authority's recommendations at Panel.
- 5.6 Where a pupil is out of education and is not considered ready for mainstream schooling, the Local Authority will seek alternative provision rather than processing the application through the Protocol.
- 5.7 To identify a suitable school place for children admitted through this protocol, the Local Authority will consult schools that are within 2 miles for children below the age of 8 and 3 miles for children aged 8 - 16. Exceptionally, schools may be approached beyond these distances where the Local Authority considers it appropriate to do so. The rationale for such decisions will be presented to the school's consulted and to the Panel in support of Local Authority recommendations.
- 5.8 The Headteachers of the schools will respond to consultation **within 5 working days**.
- 5.9 Children eligible to be placed via the Protocol are often vulnerable and may have additional needs that require support. Before making placement decisions, the Local Authority will consider any particular needs to identify which school might best be able to meet and support those needs and, where it is considered appropriate to do so, will consider the views of other agencies to inform recommendations.
- 5.10 In cases where children are referred through the Protocol on the basis that they have been out of school for four weeks or more and there are no schools with vacancies within a reasonable distance of their home address, the Local Authority will consider the child's eligibility under other criteria set out in section 2.4 to determine if background information on the child is relevant to the application. In most cases it is expected that the process will simply involve looking at the distance to schools, parental preference and cumulative data for schools (paragraph 3.4) to ensure the equitable sharing of children who are placed via the Protocol.
- 5.11 In coming to a decision about the child's placement, the Local Authority will take careful account of the views of the Headteachers and governing bodies of the schools. In particular, account will be taken of any genuine concerns about a Fair Access admission; for example, a serious breakdown in relationships between the family and school or a strong aversion by the family to the school's religious ethos.

- 5.12 If one of the schools consulted agrees that the child can be admitted, the Local Authority will inform the parent of the place available. If more than one school agrees to offer a place, the Local Authority will determine the most suitable outcome on the basis of the circumstances of the case, which will include consideration of parental preference, distance to the school and reasons provided in support of the application. The decision taken by the Local Authority will be reported at Panel.
- 5.13 If all the schools consulted are reluctant to admit, the Local Authority will recommend the most appropriate school for the child and will provide the rationale for this decision at the next Panel.
- 5.14 The Panel will meet to consider the recommendations made by the Local Authority and will either accept the recommendations or suggest amendments. The Local Authority will then notify the relevant schools of the outcome.
- 5.15 All decisions made during consultation and at Panel will be confirmed to the admitting school/s by the Local Authority by secure email. This will include the name of the child, date of birth and year group, together with a summary of the decision at Panel. The email will confirm the admission deadline and will include any background information to support the admissions process.
- 5.16 Admission authorities must admit children when asked to do so in accordance with this protocol, including where the school is operating a waiting list.
- 5.17 Where an admission authority has failed to admit a child, they will be directed to do so. If the school refuses to admit then,
- for a community or voluntary controlled school, the Director of Education and Family Support will write to the Headteacher and Governing Body to instruct the school to admit. The governing body are under a duty to admit the child and will admit the pupil within 7 working days;
 - for a voluntary aided school or foundation school, the Director of Education and Family Support 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;

- for an Academy, the Director of Education and Family Support will write to inform the Principal and Academy Trust that the Local Authority will seek intervention from the Secretary of State. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child and can seek advice from the Schools Adjudicator in reaching a decision.

6. Retrospective credit

- 6.1 Where information is subsequently received about the behaviour of a child that, had it been known at the time of the In-Year application, would have met the definition of 'challenging behaviour' as set out in the School Admissions Code (see also paragraph 5.2 above), the school may retrospectively request credits as a Fair Access admission.
- 6.2 Schools may also request retrospective credits for other children admitted to the school who would otherwise be eligible for admission under this protocol (paragraph 2.4). This only applies when the child has been admitted to a year group that is full. This does not apply if the year group has vacancies and the child can be admitted through normal In-Year admissions procedures.
- 6.3 Requests for retrospective credit should be made to the Local Authority and must include details of the new information received and evidence of issues that have arisen since the child was admitted to the school. If the Local Authority agrees, the admission will be recorded as a Fair Access admission.

7. Monitoring

- 7.1 The Panel will receive end of term reports on the children processed through this protocol.
- 7.2 A report will be prepared annually for the Office of the Schools Adjudicator and others on the operation of the Protocol.

8. Reviewing the Protocol

- 8.1 The Local Authority will keep the Protocol under review to ensure it remains fit for purpose and will consult with schools before making any changes.
- 8.2 In the event that the majority of schools can no longer support the principles and approach of the Protocol, (for example, if they believe it is not operating fairly or effectively), they can initiate a review with the Local Authority. The request for review should be made in writing to the Chair of the Panel. The existing protocol will remain binding on all schools in the local area until the point at which a new protocol is adopted.

Appendix A - Admission authorities

Admission authorities operating in the Stoke-on-Trent Local Authority area (at May 2023)

Academy Transformation Trust
All Saints Catholic Collegiate
The Alpha Academies Trust
Carmountside Primary Academy
Christ the King Catholic Collegiate
The City Learning Trust
The Co-operative Academies Trust
Creative Education Trust
The Crescent Academy
Esprit Multi Academy Trust
Excellent Partnerships Achieve Multi Academy Trust
Frank Fields Education Trust
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 Sandon Trust
The Shaw Education Trust
The Societas Trust
St Bart's Multi Academy Trust
St Chad's Academies Trust
St. John's CE(A) Primary Governing Body
St Joseph's College Edmund Rice Academy Trust
St Mary's Anglican Academy
Stoke-on-Trent City Council (for community and voluntary controlled schools):
Ball Green Primary; Burnwood Primary; Heron Cross Primary; Hillside Primary;
Holden Lane Primary; Priory CE (C) Primary; Sandford Hill Primary; St. Paul's
CE (C) Primary; The Willows Primary
Sutherland Primary Academy
Woodard Academies Trust

Appendix B - Fair Access Panel - Constitution and Terms of Reference

1. Role

- 1.1 The Fair Access Panel (the Panel) is established by Stoke-on-Trent City Council (The Local Authority) in line with the Fair Access Protocol (the Protocol).
- 1.2 The role of the Panel is to:
 - a) have regard to the aims and principles of the Protocol
 - b) consider and identify an appropriate maintained school for each case referred
 - c) ensure that no school - including those with places available – is 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.

2. Constitution

- 2.1 The Panel will be made up of a minimum of 5 Stoke-on-Trent admission authority representatives (at school SLT level). This will comprise four secondary and one primary representative (to reflect broadly the nature of cases historically for consideration).
- 2.2 The Panel will be quorate with 3 representatives in attendance.
- 2.3 Representatives will be elected annually to apply from the start of the following academic year. Elections will be administered by the Local Authority during the Summer Term.
- 2.4 The Panel will be supported by Local Authority officers from the following list:
 - Strategic Manager, School Support - Education and Family Support
 - Admissions Manager - Education and Family Support

Other Local Authority officers will attend on an as-needed basis. Example include:

- Strategic Manager, Access and Support for Vulnerable Learners - Education and Family Support
 - Strategic Manager, SEND - Education and Family Support
 - Assistant Director - Education and Family Support
- 2.5 Meetings of the Panel will be organised by the Local Authority. This will include setting agendas and recording minutes of the meeting

2.6 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. Meetings

3.1 The Panel will meet monthly during term-time. The frequency of meetings may be adjusted in response to demand for admission through the Protocol.

3.2 Where an admission authority does not have an elected representative on the Panel, it may choose to have an observer attend the Panel.

3.3 The Local Authority must be informed in advance of any observers attending on behalf of admission authorities.

3.4 Observers do not have voting rights, but can offer views on cases being discussed.

3.5 Panel members must declare any potential conflict of interest and can elect to withdraw or may be asked to withdraw if the Chair of the Panel deems this appropriate.

Appendix C Fair Access Flowchart

