



Somerset Fair Access Protocol for Admission to Schools for the Academic Years 2017- 2020

Legislation

The February 2007 Admissions Code placed a duty on each local authority to develop a Fair Access Protocol (FAP). The latest revision of the Code, in force from December 2014, restates the principles and scope of the Protocol. All admission authorities (state funded schools) **must** participate in their Local Authority's Fair Access Protocol. Where Somerset's Protocol refers to 'schools' this relates to all state funded schools including Academies and Free Schools.

Key principles of Fair Access Protocols (2014 Admissions Code)

- Each local authority **must** have a Fair Access Protocol¹, agreed with the majority of schools in its area to ensure that – outside the normal admissions round – unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. All admission authorities **must** participate in the Fair Access Protocol including Academies and Free Schools who are required to abide by the locally agreed Fair Access Protocol under their funding agreements.
- Unplaced children are those not on a school roll, whose parents have been unable to secure a school place using usual in year admissions procedures. It is expected that parents will have applied to all the schools within statutory walking distance of their home address.
- In all cases, the LA's duty to safeguard the child is paramount. Children out of school may be at risk; schools, with the Admissions & Entitlements Team, Education Welfare Service and any other relevant representatives of the Local Authority must do their utmost to ensure that children are not out of school for extended periods of time.
- The agreed protocol must ensure that the best interests of the child are of paramount importance while ensuring that no school, including those with available places, is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour².
- A school will not be required to automatically take another child with challenging behaviour in the place of a child excluded from the school

It is recognised that successful models have a protocol developed and agreed with schools and academies, data shared with all schools and academies so that the process

¹ School Admissions Code, 2012, para. 3.9

² Challenging behaviour will normally be defined as behaviour resulting in a number of fixed term exclusions and/or where the previous school indicates a serious behaviour issue; or children in receipt of High Needs Funding for BESD or ASD; or persistent poor attendance below 85% over the last 2 academic years.

is transparent, panels that include Head Teachers that meet on a regular basis in areas to discuss individual pupils and partnerships.

Operating the Fair Access Protocol

The aim of this Protocol is to place a child in school or alternative provision within 20 days of application. The flow charts (appendices 1a, 1b & 2) set out actions required of schools and the local authority in order to meet this aim.

1. Categories of children to be included in the Protocol

The list of children to be included in a Fair Access Protocol **must**, as a minimum, include the following children of compulsory school age who have difficulty securing a school place³:

Categories of children to be included in the Fair Access Protocol	Level 1 Usual In Year Admissions Procedure	Level 2 In Year Admission under Fair Access - placement by the Admissions and Entitlements Team	Level 3 In Year Admission under Fair Access - placement by the Panel for Excluded and Vulnerable Pupils
a) children from the criminal justice system ⁴ or Pupil Referral Units or alternative provision ⁵ who need to be reintegrated into mainstream education			√
b) children who have been out of education for two months or more (not including children registered as EHE whose parents are responsible for providing education)		√	
c) children of Gypsies, Roma, Travellers, refugees and asylum seekers		√	
d) children who are homeless		√	
e) children with unsupportive family backgrounds for whom a place has not been sought i.e. families working with Children's Social Care		√	

³ School Admissions Code, 2012, para. 3.15

⁴ Young people returning from secure accommodation

⁵ Education outside of school, when arranged by LAs or schools, is called alternative provision. It can range from pupil referral units and further education colleges to voluntary or private sector projects.

or Health professional			
f) children who are carers		√	
g) children with special educational needs, disabilities or medical conditions (but without a statement)		√	
The Somerset Fair Access Protocol will also apply to			
h) children known to the police and a number of other agencies		√	
i) children who have to move school because of domestic violence (whether staying in a refuge or with friends/other relatives)		√	
j) Year 6 and Year 10 pupils (from summer term)		√	
k) Year 11 pupils		√	
l) children of UK Service personnel		√	
m) any other children who arrive in Somerset outside the normal admissions round who have difficulty securing a place		√	
n) children at risk of permanent exclusion ⁶			√
o) children whose behaviour is a cause for concern		√	
p) children with poor attendance of 85% or less in the current or previous academic year		√	

Where children fall into 4 or more of the level 2 categories consideration may be given to whether they should be discussed by the Panel for Excluded and Vulnerable Pupils (PEVP).

2. Deciding when to refer an application for action under the Fair Access Protocol

(Under the School Admissions Code all schools and Academies must notify the Local authority of every application and every outcome. The SCC in year procedures should be followed in all cases)

⁶ Only children previously discussed by an area PEVP will be considered as at risk of permanent exclusion. It is expected that schools will refer a child to this panel to apply for support if they consider a child to be at serious risk of permanent exclusion.

2.1 The operation of the Fair Access Protocol is triggered when the information provided by a parent on an In Year application form or other information obtained by a school following receipt of an In Year application form leads to the Governing Body taking the decision to refuse to admit a child because the child has challenging behaviour and the school already has admitted a particularly high number of children with challenging behaviour compared to other local schools.

The majority of children requiring a school place will continue to be admitted to their local school in accordance with the usual admission procedures, rather than through this Protocol.

This protocol does not apply to children who do not live in Somerset. The parent of a child refused admission in this case has the right to appeal to an independent school admission appeal panel.

2.2. The Fair Access Protocol is not a means for admission authorities to avoid their legal responsibilities to meet parental preference. Therefore, where a parent requests a school place and the school has a vacancy in the relevant year groups, there is no need for the application to be referred under the Fair Access Protocol unless the requirements set out in paragraph 2.3 apply.

2.3. Where a Governing Body does not wish to admit a child with challenging behaviour (as defined in footnote 2) outside the normal admissions round it must refer the case to the Admissions & Entitlements Team for possible action under the Fair Access Protocol by email as soon as possible, but in the case of an Own Admission Authority not more than 10 school days after the initial approach or in the case of a VC or Community School not more than 5 school days. This will normally only be appropriate where the school can provide evidence that it has a particularly high proportion of children with challenging behaviour or previously excluded children. The LA will take no action under the Fair Access Protocol when a child is already on roll at a school within a reasonable distance of their home address as such children are not unplaced.

2.4. Paragraph 2.3 does not apply to a child looked after; a previously looked after child⁷ or a child with a statement of special educational needs (SEN) naming the school in question, as these children **must not** be refused admission on the basis of challenging behaviour. Admissions authorities **must not** refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for SEN⁸. In deciding whether a child is ready for mainstream school, the child must be placed on roll and admitted to school in the first instance, where their needs can be assessed, before seeking appropriate support from the relevant agencies. This does not apply to children already attending PRUs whose placements will be agreed through the area Panels for Excluded and Vulnerable Pupils.

2.5 Those children for whom English is an additional language will not be considered as “challenging” under the Somerset Fair Access Protocol. Permanently excluded pupils are also not included in the Fair Access Protocol and are managed in line with the Statutory Guidance on Exclusions via the area Panel for Excluded and Vulnerable Pupils however they are included in the equitable share data used by panels to identify school places for unplaced children managed through the protocol.

3. Fair Access Protocol Arrangements

⁷ The term only refers to looked after children who were adopted (or subject to residence orders or special guardianship orders) immediately following having been looked after.

⁸ School Admissions Code, 2012, para. 3.13

On receipt of the In Year application form by the school, the Governing Body / Admissions Committee / Academy Trust will consider the request. The admission will be agreed as:

Level 1: Standard In Year Admission

Level 2: In Year Admission Procedure under Fair Access (Inform the Admissions & Entitlements Team requesting the primary vulnerability category to be logged on the equitable share data)

Or the admission will be refused:

Level 2: In Year Admission Procedure under Fair Access (Refer to Admissions & Entitlements Team for consideration of placement under equitable share)

Level 3: In Year Admission Procedure under Fair Access (Refer to Admissions & Entitlements Team for referral to PEVP)

3.1 For children considered under level 1 usual In Year Admission procedures apply.

3.2 For children refused a place under level 2 the Local Authority Admissions & Entitlements Team will consider the case, advise the parent/s and if the child remains unplaced will, if appropriate, request a school place demonstrating fair and equitable share. The In Year Team with the Admissions & Entitlements Team Leader or Access & Admissions Manager will determine the placement using the equitable share data detailed in appendix 3, seeking to protect any one school from a disproportionate number of placements of children with challenging behaviour. In addition, where possible, the panel will also take account of the circumstances of the individual pupil. In deciding a placement every effort will be made to ensure that transport arrangements, which may be the responsibility of parents, are reasonable and cost effective.

3.3 Children considered by the Admissions and Entitlements to meet the criteria under level 3 will be referred to the Area Panel for Excluded and Vulnerable Pupils. PEVP will determine a school place with a supported planned integration as necessary. Places will be identified using the equitable share data detailed in appendix 3, seeking to protect any one school from a disproportionate number of placements of children with challenging behaviour. In addition, where possible the panel will also take account of the circumstances of the individual pupil and which school will be best able to meet their needs. In deciding a placement, every effort will be made to ensure that transport arrangements, which may be the responsibility of parents, are reasonable and cost effective. If the panel agree the pupil is not ready for admission to mainstream school, alternative provision may be offered to parents. See appendix 3 – Terms of Reference for Area Panels for Excluded and Vulnerable Pupils of Somerset Local Authority.

3.4 The departmental guidance from the DfE, 'Fair Access Protocols: Principles and process' expects that all parties will act with a sense of urgency to identify a school place for any child who has difficulty securing one or who falls under the Fair Access Protocol. All schools including Academies are expected to respond with a decision to requests by Local Authorities to admit under Fair Access protocols within seven calendar days.

3.5 There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol. The parent of a child refused admission under this protocol still has a right to apply and appeal to an independent admission appeal panel for their preferred school/s.

3.6 The fact that the Admission Number has been reached or exceeded cannot be given as a reason for not admitting a pupil under this protocol.

3.7 It is acknowledged that some schools may hold waiting lists during the academic year. There is no requirement for a child who has been refused a place on the grounds of their challenging behaviour and referred to the Local Authority under FAP to be added to the school's waiting list. However the School Admissions Code para 2.14 requires children being placed by the Local Authority under Fair Access to have priority over children on a waiting list.

3.8 Schools must not require that an appeal be heard before a child is admitted under the protocol and must not refuse a child on the basis that an appeal was previously unsuccessful.

3.9 Statutory powers of direction and the rights of schools to object to the Schools Adjudicator are set out on pages 7 and 8.

3.10 Should a school feel within the first term following admission that a pupil falls into one of the categories listed under the Fair Access Protocol and is displaying challenging behaviour; contact should be made with the Service Manager, Access & Admissions or the relevant Area PRU Head for a discussion. Evidence will be required. If agreed the admission will be added to the equitable share data against the school. The school may be required to send a representative to a panel meeting if the child is to be considered by PEVP. Please note that a referral back to the Local Authority will not result in the pupil being removed from the school roll other than in very exceptional circumstances as determined by PEVP and only with the agreement of parents.

3.11 The Local Authority is required to include an overview of admissions under the Fair Access Protocol and identify any issues in its operation in its annual report to the Schools Adjudicator.

4. Record keeping

A record will be kept of all pupils that fall into a vulnerability category or are placed using this protocol on Capita ONE (please note that level 2 admissions will only be logged if notified to the Admissions & Entitlement Team by schools). The Admissions & Entitlements Team, Access Casework Officer and SEN Team will log all relevant admissions on to each child's 'relocation tab'. For equitable share⁹ purposes this will include those that fall into any of the categories (a) to (p) listed in this protocol, children placed by the SEN Team with an Education Health Care Plan for BESD and ASD, permanently excluded pupils placed by PEVP and successful managed transfers when notified to the area Access Casework Officer. Approaches and actual admissions to schools will be logged under the appropriate level. The following information will be recorded:

- All approaches for children that meet the fair access criteria made to schools under this protocol
- All admissions to schools of children that meet the fair access criteria under this protocol
- Category and level under which the child falls
- Team that has made the approach e.g. Admissions, Access or SEN
- Current status of the approach

⁹ Equitable share is defined as the even distribution of children with challenging behaviour within the context of other local schools. Comparison of data between local schools will be considered when requesting places under Fair Access.

- Notice to direct date

Approach dates and on roll dates will be recorded and will provide data on the length of time the process has taken. Area equitable share data will be sent with each approach for a place under fair access. Reports will also be produced as necessary/on demand and shared with all schools and relevant partners. Schools are required by the School Admissions Code to notify the Local Authority of all In Year applications and admissions to ensure that the Local Authority has up to date records of numbers on roll in all year groups. It is also requested that schools alert the Local Authority to children they believe are without education provision if they become aware of them, for safeguarding purposes.

5. Area Panels for Excluded and Vulnerable Pupils (PEVPs)

The role of the PEVPs is to consider level 3 cases and those children who have been permanently excluded who are ready to be integrated back into mainstream education. The panels will also monitor the number of Fair Access placements and record managed transfers within its area when schools notify the area Casework Officer of a successful fresh start. Notification of a successful managed transfer must include the reason for the fresh start e.g. at risk of PEx or very poor attendance.

The Local Authority will provide alternative provision for any unplaced child via the Panel for Excluded and Vulnerable Pupils while negotiations with schools under this protocol are on-going if the approach for a school place has not been resolved within 20 days.

6. Training and Guidance for Schools

The Local Authority will offer training in all aspects of the Somerset Fair Access Policy to all Governors and to school staff on request. See appendix 4 for details.

Escalation Procedures

The Somerset School Admissions Escalation Procedure is explained via the flowchart in appendix 4. If a school fails to respond, or refuses to admit a pupil within 7 calendar days of being asked to take a pupil under the Fair Access Protocol, the escalation procedure will be initiated. In cases where PEVP has requested a place, school reasons for refusal to admit will be reviewed by the area panel before initiation of the escalation procedure. In cases where a parent is unhappy with the type of provision agreed, the decision will be reviewed by PEVP but there is no further right of appeal. Please note that if a parent is in agreement with the decision to return their child to a mainstream school but is not in agreement with the school identified there will be no further review of the decision by PEVP and parents will be advised of their right to apply for their preferred school using normal in year admissions procedures.

7. Powers of Direction

The School Admissions Code 2012 summarises the powers of direction given to LAs under sections 96 and 97 of the 1998 Education Act, and the differing requirements in relation to admissions to Academies:

3.16 Local authority powers of direction (general) - A local authority has the power¹⁰ to direct the admission authority for any maintained school (except one for which the LA is the admission authority) in its area to admit a child even when the school is full. The local authority can only make such a direction in respect of a child in the local authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The local authority **must** choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded. It **must not** choose a sixth-form that selects by ability unless the child meets the selection

¹⁰ 63Sections 96 and 97 of the SSFA 1998

requirements, or a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources.

3.17 Before deciding to give a direction, the local authority **must** consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. If, following consultation, the local authority decides to direct, it **must** inform the governing body and head teacher of the school. The governing body 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. The local authority **must not** make a direction until the 15 days have passed and the case has not been referred.

3.18 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. The Adjudicator's decision is binding. The Adjudicator **must not** direct a school to admit a child if this would require the school to take measures to avoid breaking the rules on infant class sizes and those measures would prejudice the provision of efficient education or the efficient use of resources.

3.19 **Local authority powers of direction (looked after children)** - A local authority also has the power¹¹ to direct the admission authority for any maintained school in England to admit a child who is looked after by the local authority, even when the school is full. The local authority **must not** choose a school from which the child is permanently excluded but may choose a school whose infant classes are already at the maximum size³.

3.20 Before deciding to give a direction, the local authority **must** consult the admission authority of the school it proposes to direct. The admission authority **must** tell the local authority within 7 days whether it is willing to admit the child. If, following consultation, the local authority decides to direct, it **must** inform the admission authority, the governing body (if the school is a voluntary controlled or community school), the local authority that maintains the school, and the head teacher. The admission authority can appeal by referring the case to the Schools Adjudicator within 7 days. If the child has been permanently excluded from two other schools and the most recent exclusion was within the previous two years, the governing body (if the school is a voluntary controlled or community school) may also refer the case to the Adjudicator. The admission authority or governing body **must not** refer the case unless it considers that admitting the child would seriously prejudice the provision of efficient education or the efficient use of resources. If the admission authority or governing body does refer the case, it **must** tell the local authority that looks after the child. The local authority **must not** make a direction until the 7 days have passed and the case has not been referred.

3.21 If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school in England **must** admit the child. The Adjudicator's decision is binding. The Adjudicator **must not** direct an alternative school to admit a child unless the local authority that looks after the child agrees, nor if the child is permanently excluded from that school, nor if the admission of the child would seriously prejudice the provision of efficient education or the efficient use of resources.

3.22 **Secretary of State power of direction (Academies)** - Where a local authority considers that an Academy¹² will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local

¹¹ Sections 97A-C of the SSFA 1998.

¹² 'Academies' means Academy Schools and includes Free Schools

authority can ask the Secretary of State to intervene. 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 Adjudicator in reaching a decision¹³.

The process for escalation where an academy refuses to admit a child under the Fair Access protocol is as follows:

- Local Authority (LA) must complete and send the appropriate Education Funding Agency form for consideration of a request to direct admission to the Academy with supporting evidence
- The EFA will inform the Academy that it has received a request for a direction and will ask for any further evidence to be supplied within 7 calendar days

All Academies are subject to their funding agreements which say they must abide by the locally agreed Fair Access protocol.

Review

The Local Authority will request the sign up of schools every 3 years. In the event that the majority of schools can no longer support the principles and approach of the Fair Access Protocol, schools should initiate a review with the Local Authority via SASH, SAPHTO or the Compact. The existing protocol remains binding on all schools until the majority sign up to a revised version. The Local Authority may make amendments if required to comply with any revision to the School Admissions Code or associated legislation.

Publication

The Fair Access Protocol will be published on the admissions page of the Somerset County Council website and will form part of the In Year admission arrangements for all state funded schools in Somerset.

Contact

Queries regarding the operation of the Protocol should be directed to the Admissions & Entitlements Team or the appropriate Access Casework Officer

Contact Details:

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Background papers

<https://www.gov.uk/government/publications/school-admissions-code--2>

¹³ 39 Section 25(3A) of the SSFA 1998