

# Solihull Primary Fair Access Protocol & Terms of reference

June 2024

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## Introduction and regulations

The School Admissions Code requires each local authority to have a Fair Access Protocol (FAP) which has been agreed by a majority of schools in its area. All mainstream schools, which include academies, free schools and trust schools are required to participate in their local authority's Fair access protocol.

## Children subject to the Fair Access Protocol

The following list brings together the categories of children identified in the Admissions Code 2021. These are the only categories permitted by the code. .

FAPs 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.

Eligibility for the FAP 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 FAP. 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 FAP.

Any children not resident in Solihull will be subject to arrangements made by their home local authority.

- a. children subject to either 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 arrangements
- 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 behaviour and referred to the protocol in accordance with paragraph 3.10 of the School Admissions Code.
- k. children for whom a place has not been sought due to exceptional circumstances.
- 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 place.

This protocol is designed to provide a framework within which all schools in Solihull work together to admit their fair share of children that may need additional support and intervention to receive a mainstream education, or where all schools in an area are oversubscribed in the year group.

Where it has been agreed that a child will be considered under the FAP, a place must be allocated for that child within 20 school days. Once they have been allocated a place via the FAP, arrangements should be made for the child to start as soon as possible.

Children placed through the FAP will be given priority for admission over others on a waiting list or those awaiting an appeal.

Although there is no duty to comply with parental preference when placing through the protocol, where possible, consideration will be given to all factors that support good attendance and achievement.

Schools can only refuse an application for admission if:

- The school can demonstrate that further admission would cause prejudice to the provision of efficient education and use of resources, or
- The pupil has been permanently excluded from two schools and the most recent exclusion was within the previous two years.

If a school is refusing to offer a place to a child that does not satisfy the FAP criteria for any reason other than the two grounds detailed above these reasons must be provided to Solihull Council in writing and the council may ask the FAP panel to consider the case.

## **FAP panel**

The FAP Panel has the following functions:

- Consider level one applications where Solihull Council and the target schools are in dispute and admission has not been secured.
- Consider appropriate provision for level two applications and managed moves.
- Consider all referrals for children in alternative provision deemed appropriate to return to mainstream school.

Referrals to the Fair access panel must be accompanied by a completed referral form and other associated documentation which the referrer deems necessary for the panel to decide about future placement needs. This includes any paperwork /evidence received from previously attended schools outside of Solihull.

The panel will consist of representatives from appropriate schools or collaboratives, AP provisions and appropriate council representatives.

The fair access panel will consider each case and must agree a school or appropriate alternative provision for the child. The decision of the panel is binding on all parties.

If the panel outcome does not result in an offer, the Local Authority will proceed to direct a school to admit a child. In the case of an academy, the Local Authority will request a secretary of state direction.

In some cases, a child may be allocated a school, but the parent does not accept the place. In this circumstance the school should hold a place and the case referred to the Solihull Education Inclusion Team who will consider issuing a School Attendance Order. The order will name the school identified through the admissions process or the FAP. The child should not be put on to the school roll until they start to attend.

Following notification of the panel's decision, the identified school should make arrangements to admit the child within 5 school days.

## **Fair Access Protocol process: Level one**

Applications considered under level one, are mainstream applications where a suitable place could not be secured through the normal admissions process. Applications received from a Solihull child, new to the borough, who satisfies the criteria in the school admissions code, will be processed as a level one Fair access protocol application.

Following receipt of a complete application, the council will share the referral request with all schools in the locality area.

The identified schools will be asked to consider the admission under the FAP level one. A response to the request is expected within five school days. If a place can be offered the child is expected to start within five school days. If all identified schools decline to admit the child, the case is referred to the FAP panel.

Where a school does not respond to Solihull Council's request to consider an admission within 5 school days, the council will assume that the child can be offered a place. An offer letter will be sent to the parent explaining that the child is expected to start within a further 5 school days. A copy of the offer letter will be sent to the school.

In cases where the school delays admission which leads to the council being required to make interim provision the FAP Panel can agree that the council recharge the school with the cost of the interim provision.

## **Fair Access Protocol: Level two**

In some exceptional cases, an application can be a more complex admission. These applications will be recorded as level two and considered by the Fair access panel. Such cases are likely to include:

- Children with challenging behaviour as described in the school admissions code 2021.
- Children deemed appropriate to return to a mainstream school following attendance at an alternative provision.
- Children wishing to return from a period of elective home education (EHE). Following the submission of parental preference, if the normal admission process does not deliver an offer, then the child would be expected to return to the school attended immediately prior to the period of home education providing they are still in the relevant key stage for the school. Where the school deems it is inappropriate for the child to return, the school will take the child on roll and seek an appropriate managed move. For children new to the borough registered as EHE in their previous authority, they would be expected to attend the catchment school or nearest appropriate faith school. This process will also be followed where the local authority wishes to issue a School Attendance Order and the parent is refusing to name a school, so the local authority must name a school in the SAO.

# Challenging Behaviour

Behaviour is described in the code 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 or other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment.’*

The following reasons **on their own** should not be grounds for considering that a child may display challenging behaviour:

- poor attendance elsewhere.
- a defined number of suspensions, without consideration of the grounds on which they were made.
- special educational needs.
- having a disability.

## Managed moves

Managed moves are a voluntary agreement between two head teachers. The parent must also agree. Where a managed move has been deemed successful and a permanent move to a new school is agreed, and where the receiving school has a waiting list for admission, the managed move must be approved at the next FAP panel. This allows the legal admission of child via FAP without consideration of the applicants on the waiting list.

## Monitoring and reporting

The FAP panel will define a basic dataset that will be made available at each meeting. This will include school level data on in-year admissions (normal, level 1 and level 2) and permanent exclusions.

Solihull Council’s Inclusion Team will check the attendance of children placed by the panel to verify that children have started. Attendance will be reviewed after 12 months to facilitate reporting of the effectiveness of the Fair access protocol.

The council will monitor the effectiveness of the FAP and provide regular reports to the Director of Childrens’ Services and the FAP panel. This information will be used in the council’s annual report to the Schools’ Adjudicator.

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<sup>1</sup> *Extract from the school admissions code*

*3.10 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.*

*3.11 An admission authority should only rely on the provision in paragraph 3.10 if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.*

*3.12 The provision in paragraph 3.10 cannot be used to refuse admission to looked after children, previously looked after children; and children who have Education, Health and Care Plans naming the school in question.*

# Terms of reference

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## Role of the panel

The role of the panel is to secure mainstream school places or, where appropriate, placements at alternative provision for children and young people of statutory school age (referred to hereafter as children).

The panel will oversee and implement the provisions of the agreed Fair Access Protocol (FAP) and make placement decisions in respect of children who are resident in Solihull or attending a Solihull provision.

To consider and identify an appropriate placement in the following circumstances:

- Cases where the Local Authority and identified school cannot reach agreement **and** the application falls into one of the listed vulnerable / hard to place categories in section 3.17 of the school admissions code and as described in the FAP.
- New admissions applications where the admissions process has not delivered a school place for the child.
- Consideration of referrals from alternative provision deemed appropriate to return to mainstream school.
- Referrals from schools that have agreed a managed move but there is a waiting list for admission to that year group.

In determining an appropriate placement, the panel will have regard to:

- Reasonable measures undertaken by Solihull Council to place the child through the normal in-year admissions process.
- Any objections raised by the identified provision.
- Anticipated timescale for the admission and duration if placement is not in a mainstream school.
- Any exceptional resource issues.
- Advice on multi-agency support required.

All placements agreed at panel meetings under the FAP will be implemented within five school days wherever possible, with an additional five school days if parental consent needs to be secured for a placement.

The panel will monitor the placement and/or reintegration into mainstream, of all children placed in the variety of alternative provision available in the borough. The panel will also monitor the placement and reintegration of all children into mainstream schools using managed moves between schools.

The panel will consider and share data with all schools and appropriate Local Authority staff on:

- Pupil numbers
- Permanent exclusions
- School placements made under the FAP

## **Membership of the panel**

The panel consists of:

- All Solihull primary, infant and junior head teachers and principals.
- Solihull alternative provision providers appropriate to the age of the child.
- Solihull council representatives: representatives from the School Admissions team and Inclusion team.
- Other service representatives as pertinent to the agenda, for example 0-25 SEND service, school place planning, School Improvement.

## **Meetings**

Meetings will be chaired by a senior officer (Head of Service or above) of Solihull Council. The quorum for the panel will be five head teachers and two Solihull Council officers. Depending on the cases considered, the meeting will be held on a locality basis, North, South and Rural East. Only schools within the locality of the case will form the panel.

The panel will meet initially on a half-termly basis where necessary. The 2021 Admissions Code requires that placement decisions need to be made within 20 school days of a child being referred to the FAP. This may require additional panel dates to be arranged should the need arise. Dates and meetings will be administered by the Solihull Council (Education Business support team).

The agenda and supporting papers will be sent out to all members electronically at least three full working days ahead of the panel date.

The panel aims to achieve a consensus when making recommendations with the chair reserving the right to make a final decision where a consensus is not reached.

The panel may provide the receiving school or other institution with information and advice which may be of use in securing a successful admission.



## Decisions of the panel

Prior to the formal panel, a fair access referral form containing the details of the case will be sent to schools within the locality (North, South and Rural East). The referral form will include information on parental preference, catchment schools or closest faith school where applicable.

Schools must respond to the request to place the child. Any school agreeing to admit the child prior to panel will be given the same recognition for a child placed at full panel and the formal panel hearing will not need to proceed. If an admission is not agreed prior to the panel, the school will be required to complete the referral form providing information for the relevant year group providing:

- Number of pupils in the year group
- Pupils on School Support
- Number of pupils with an EHCP
- Number of looked after children (LAC)
- Number of permanent exclusions
- In-Year admissions since the start of the academic year
- Number of teaching staff & support staff
- Any additional rationale provided by school to be taken account of by the panel.

If none of the schools selected for referral agree to admit the child prior to the panel, the information provided will be considered by the panel to determine the school to be offered. Previous FAP decisions in the current academic year will also form part of the decision making.

The panel will ensure that all schools are treated in a fair, equitable and consistent manner. This means 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 otherwise being placed via the FAP. A disproportionate number of children would include admitting a second child via the Fair Access Protocol in the same year group, unless all schools in the locality have admitted a Fair Access child to this year group.

Schools with available places should not be expected to admit all children being placed via FAP.

Where a school expresses compelling reasons for not being able to admit a child via the FAP, for example due to health and safety reasons, this should be taken into consideration before a decision is made to place a child in that school.

Schools cannot cite oversubscription as a reason for not accepting pupils on their roll under the protocol.

Decisions made by the panel are binding on the school. The identified school must admit the child within the specified timescales.

Placements are made over and above the normal admission criteria for each school and take priority above any students on a waiting list.

Placements are made irrespective of number on roll unless it is considered by the panel that admitting the student in question would seriously prejudice the provision of efficient education or the efficient use of resources. Reasons for prejudice/efficient use of resources must be recorded in the minutes. However, Panel must agree an alternative school for placement. Whilst prejudice/efficient use of resources may be an argument at a number of schools, the prejudice to a pupil of not having a school place would ultimately be higher.

For particularly challenging re-integration cases, the panel may give consideration to potential short term additional support to ensure successful admission.

If the panel agrees to a placement for a child at a school that is not represented at the meeting, the decision is binding, and the school must admit the child. Decisions of the panel will be issued to any school not in attendance within three days of the panel meeting. The communication will inform of the decision made by the panel and the expectation that a placement meeting be arranged within five school days and that the child is placed on roll within 10 school days.

## **Considerations to be made by the panel.**

There is a balance to be struck between finding a place quickly and finding a place which is appropriate for the child.

No school will be asked to take an excessive or unreasonable number of students meeting the definition of challenging behaviour in the 2021 School Admissions Code, even where there are places in the year group. Children should not be expected to travel unreasonable distances, defined as outside statutory walking distance for transport policy purposes.

## **Evaluation**

The function of the panel, the in-year admission arrangements and the FAP will be reviewed as part of the annual admissions consultation.