

**FAIR ACCESS IN  
NORTH SOMERSET  
September 2021**

# FAIR ACCESS PROTOCOL

## 1. Introduction

Each Local Authority **must** have a Fair Access Protocol, 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. In agreeing a protocol, the Local Authority **must** ensure 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 behaviour. The protocol **must** include how the Local Authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.

The Fair Access Protocol is written in line with the [School Admissions Code](#) and [Fair Access Protocols: Principles and Process](#).

## 2. Principles of the Fair Access Protocol

- 2.1 The Fair Access Protocol will apply to all admission requests outside the normal admission round with the exception of:
1. a child with a statement of Special Educational Need (SEN) or Education Health Care Plan (EHCP) which names the school in question;
  2. a looked after child or a previously looked after child.

Paragraph 3.12 of the School Admissions Code 2021 directs that such children must be admitted to the school in question and that the principles of Fair Access do not apply to such cases.

- 2.2 Admission 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 special educational needs.
- 2.3 The operation of Fair Access Protocols is triggered when a parent of an eligible child has not secured a school place under in-year admission procedures.
- 2.4 All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for Local Authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, although, parents' wishes will be taken into account.
- 2.5 The Protocol encourages the Local Authority and schools to work together in partnership to ensure children are placed in the most appropriate placement as soon as possible. This protocol incorporates guiding principles against which to place children who may have difficulty securing a school place outside the normal admissions round.
- 2.6 Paragraph 2.9 of the School Admissions Code 2021 states that Admission authorities must not refuse to admit child solely because:
- a) they have applied later than other applicants
  - b) they are not of the faith of the school in the case of a school designated with a religious character
  - c) they followed a different curriculum at their previous school;
  - d) information has not been received from their previous school; or
  - e) they have missed entrance tests for selective places.

### **3. The North Somerset Context**

- 3.1 This protocol covers all admission requests outside the normal admissions round and applies to all North Somerset maintained schools including Academy, Community, Foundation, Free Schools, Voluntary Controlled and Voluntary Aided schools.
- 3.2 In line with the requirements set out in paragraph 3.17 of the School Admissions Code 2021 FAPs are intended to act as a safety net for the most vulnerable. As such, they may only be used to place the following categories of children, where a child is 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 in-year admissions process:
- 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 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; and
  - m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

For the purposes of this Code and criteria j, 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 be reasonably expected to 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.

- 3.7 Schools cannot refer to oversubscription of school places as a reason for not admitting a pupil under a Fair Access Protocol. Equally, no school, including those with places available, is asked to take a disproportionate number of children in each year group who have been excluded from other schools or who have challenging behaviour or who are known to have a history of behavioural problems.
- 3.8 Schools must notify the Local Authority of a Fair Access Protocol Referral as soon as possible after receiving the application and must respond in writing to the applicant with the

outcome of the application within the statutory 15 school days. Schools cannot insist on an appeal being heard before admitting a child under this Protocol.

- 3.9 Where a Governing Body 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 School Admissions Team for action under the Fair Access Protocol. This will normally only be appropriate where a school can provide evidence that it has a particularly high proportion of children with challenging behaviour and that evidence is supported by the School Admissions Team. In such cases, the School Admissions Team will refer the case for consideration to the Fair Access Panel (aka via the Primary or Secondary Inclusion Panel). Any children that are without any form of education will be referred to the Primary or Secondary Inclusion Panel for an alternative placement to be found.
- 3.10 Wherever possible, pupils with a religious affiliation should be matched to a suitable school (which could result in the school being asked to admit over PAN). As per section 2.14 of the School Admissions Code, a place allocated in accordance with the Fair Access Protocol must take precedence over other children on the waiting list. If relevant, infant class size legislation will still apply and children admitted in accordance with the Fair Access Protocol are not excepted pupils.

#### **4. Standard In-Year Admission Procedure**

- 4.1 Most applications will be considered under the usual admissions procedures. Applications will be considered up to PAN or another agreed limit. Looked after children and previous looked after children will be admitted to the preferred school even if the school is above PAN or other agreed limit as long as the admission does not prejudice provision of efficient education or the efficient use of resources.
- 4.2 A school should aim to confirm a decision to the admission request within ten school days to parents/carers but must provide a written response within 15 school days. Where an application is refused, the admission authority must also set out the reason for refusal and information about the right to appeal. Section 2.30 of the School Admissions Code states: Where an admission authority manages its own in-year admissions, it must also notify the local authority of every application and its outcome as soon as reasonably practicable, but should aim to be within two school days, to allow the local authority to keep up to date figures on the availability of places in the area and to ensure they are aware of any children who may not have a school place.

#### **5. In-Year Admission Procedure for Identified Fair Access**

- 5.1 The Local Authority will ensure that no school is asked to admit a disproportionate number of unplaced children with challenging behaviour and will not expect a school to automatically take another child with challenging behaviour in the place of a child excluded from the school (paragraph 3.16 School Admissions Code 2021).
- 5.2 Pupils will be allocated to both under and over-subscribed schools on a fair, equitable and consistent basis.
- 5.3 All managed moves will be reported and monitored through the Primary and Secondary Inclusion Panels. A representative of the school is invited to attend the bi-weekly meetings (term time) to provide updates.
- 5.4 A scoring system will be used to assist in making decisions about where to place children whilst also ensuring compliance with section 3.16 of the School Admissions Code. Complex cases will include managed transfers, admissions via the Fair Access Protocol, and

complex admissions of children with challenging behaviour agreed by the Primary or Secondary Inclusion Panel. Each individual case will be considered at the Primary or Secondary Inclusion Panel. The Panel will determine which admissions are to be listed as complex cases and included in the scoring system.

The higher the score, the higher the proportion of complex cases that the school cohort has in relation to their percentage share of the cohort. The colour shading is automatically generated based on the score. Dark red is the highest score and green the lowest.

The data is calculated by taking into account the total number of places in the a cohort across the whole of North Somerset (PAN/admission level), how many children are currently on roll in any year group by school and calculating the percentage of the overall cohort in each school as compared with the whole of North Somerset.

The number of complex cases at the school will also be taken into account and this will be divided by the percentage of overall cohort in North Somerset to calculate a score.

For example, for school A, that has a PAN of 100, with 93 pupils on roll in year 7, they have 7 vacancies and 12.8% of the total number of year 7 children in North Somerset, in their school. Having 2 complex cases in the year group is 20% of the complex cohort and equates to a score of 15.6. Based on this, and the option of three schools with a lower score rating, school A would be less likely to be asked to admit the child.

An example of the scoring system is set out below:

Year Group 7						Current number of complex cases	Rating
School	PAN	Number of roll	Spaces	School's % of total cohort in North Somerset	% of total complex cohort in North Somerset	(Managed Transfers / Fair Access / Agreed Complexity cases attending school with a start date within the last 6 months)	(current number / % of cohort)
A	100	93	7	13%	20%	2	15.6
B	150	154	-4	21%	20%	2	9.4
C	200	201	-1	28%	10%	1	3.6
D	100	99	1	14%	30%	3	22
E	180	180	0	25%	20%	2	8.1
<b>Total</b>	<b>730</b>	<b>727</b>	<b>3</b>	<b>100%</b>	<b>100%</b>	<b>10</b>	

## 6. Reintegration into Mainstream Schools

6.1 Pupils should not be reintegrated to mainstream schools unless they are ready and schools should not be required or pressured into taking a pupil until their behavioural problems have been assessed, suitably addressed and they are ready to take the step back into a mainstream setting. Reintegration cases from a Pupil Referral Unit will be considered at the Primary or Secondary Inclusion Panel. In addition, some pupils may benefit from an early start in a further education college or other setting.

Children who have been permanently excluded, and children for whom mainstream education is not yet possible will be referred to the Primary and Secondary Inclusion Panel

who will consider the most appropriate placement for the pupil (including alternative provision for those pupils for whom mainstream and/or PRU placement is not appropriate). All schools, academies, free schools will be invited to the relevant part of the inclusion panel to discuss these cases.

- 6.2 As an over-arching principle in placing pupils, North Somerset Council will balance the requirement to consider the circumstances of the individual pupil with finding a place quickly. 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.

## **7. Transport**

- 7.1 Transport will be considered on an individual basis as part of the decision.

## **8. Parental Preference**

- 8.1 There is no duty to comply with parental preference when allocating places through the Fair Access Protocol, but the wishes of parents are taken into account. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered.

## **9. Decisions**

- 9.1 Decisions will be made in a two-step process.

1. Panel to consider the Fair Access Protocol referral and either agree or decline the individual case to be considered under Fair Access Protocol.
2. Panel to determine a suitable placement for the child.

The decision from Panel will be shared with the school in writing, confirming if the referral has been upheld or dismissed.

If the referral is upheld, meaning the school is not required to admit the child, the Panel will seek an alternative placement.

If the referral is dismissed, meaning the school is required to admit the child, the admissions authority will have 7 calendar days to confirm the child's start date. An update will then need to be provided at the following Panel to confirm the child is on the school's roll and has started.

In line with the School Admissions Code, any decision of Panel is binding on all parties and there is no right to appeal.

All admission authorities must participate in the Fair Access Protocol and must not refuse to admit a child thought to be potentially disruptive or likely to exhibit challenging behaviour on the grounds that the child must first be assessed for special educational needs.

The local authority is the admissions authority for North Somerset Community and Voluntary Controlled schools and can direct these schools to admit the child.

If an own admissions authority school (VA or Foundation/Trust) does not agree with the decision from panel and therefore refuses admission to a child against the Panel's decision,

the School Admissions Team will follow its powers to direct the governing body to admit in line with sections 3.23 and 3.26 of the School Admissions Code. The governing body can appeal by referring their opposition to a potential direction to the Schools Adjudicator within 15 days. The Adjudicator's decision is binding.

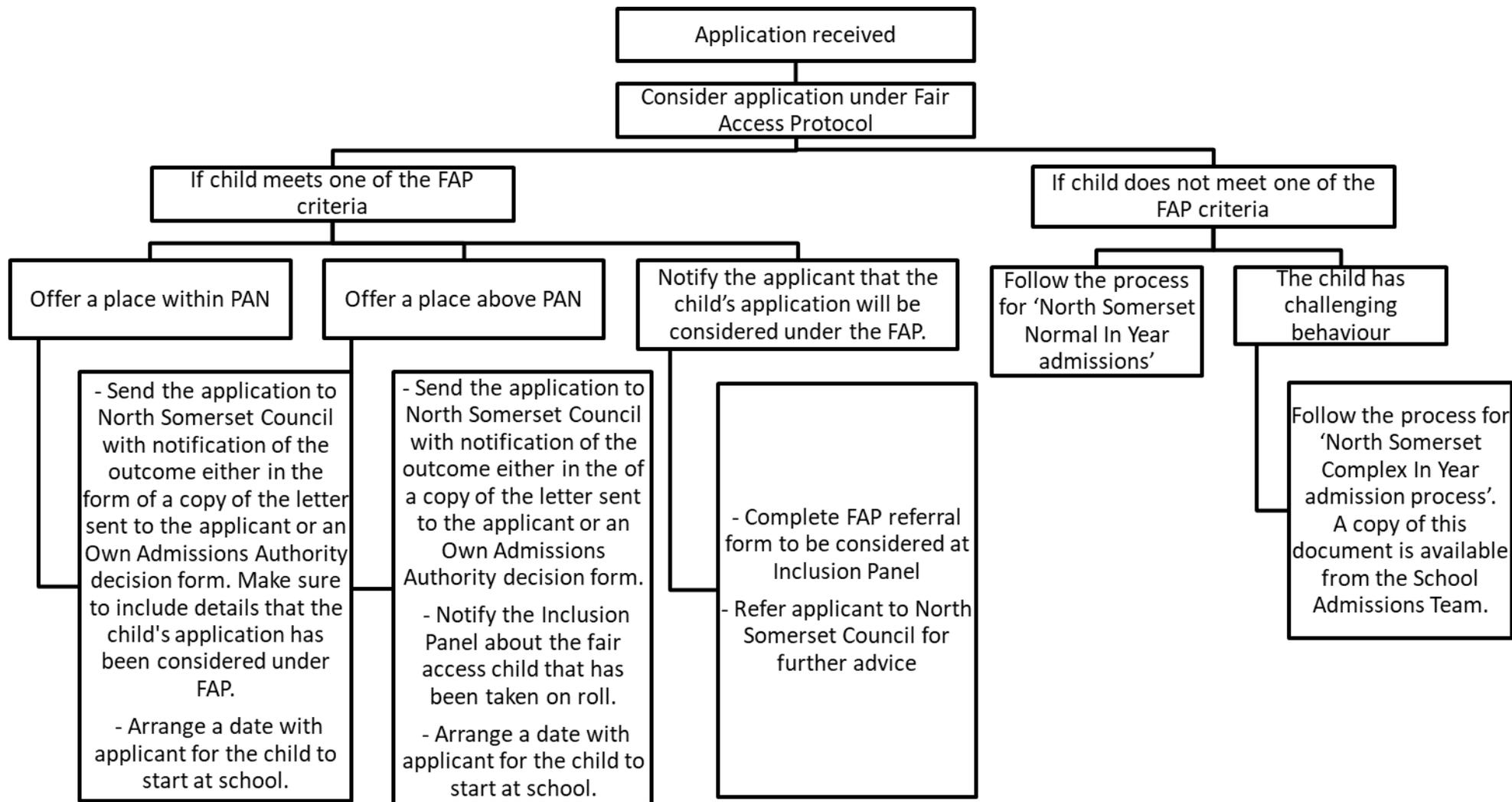
Where a local authority considers an Academy should admit the child, in line with Section 3.29 of the School Admissions Code, it can apply for a direction to the Secretary of State.

## **10. Review**

- 10.1 North Somerset Admission arrangements will be subject to regular consultation and review. PHANS and SHINS or EEPB will monitor the effectiveness of the Protocol and consider how well existing and proposed admission arrangements serve the interests of children and parents in North Somerset.
- 10.2 In the event that the majority of schools in North Somerset can no longer support the principles and approach of North Somerset Council's Fair Access Protocol, they should initiate a review with the Local Authority by sending the Director of Children's Services a letter signed by headteachers of over half of all North Somerset schools. 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.

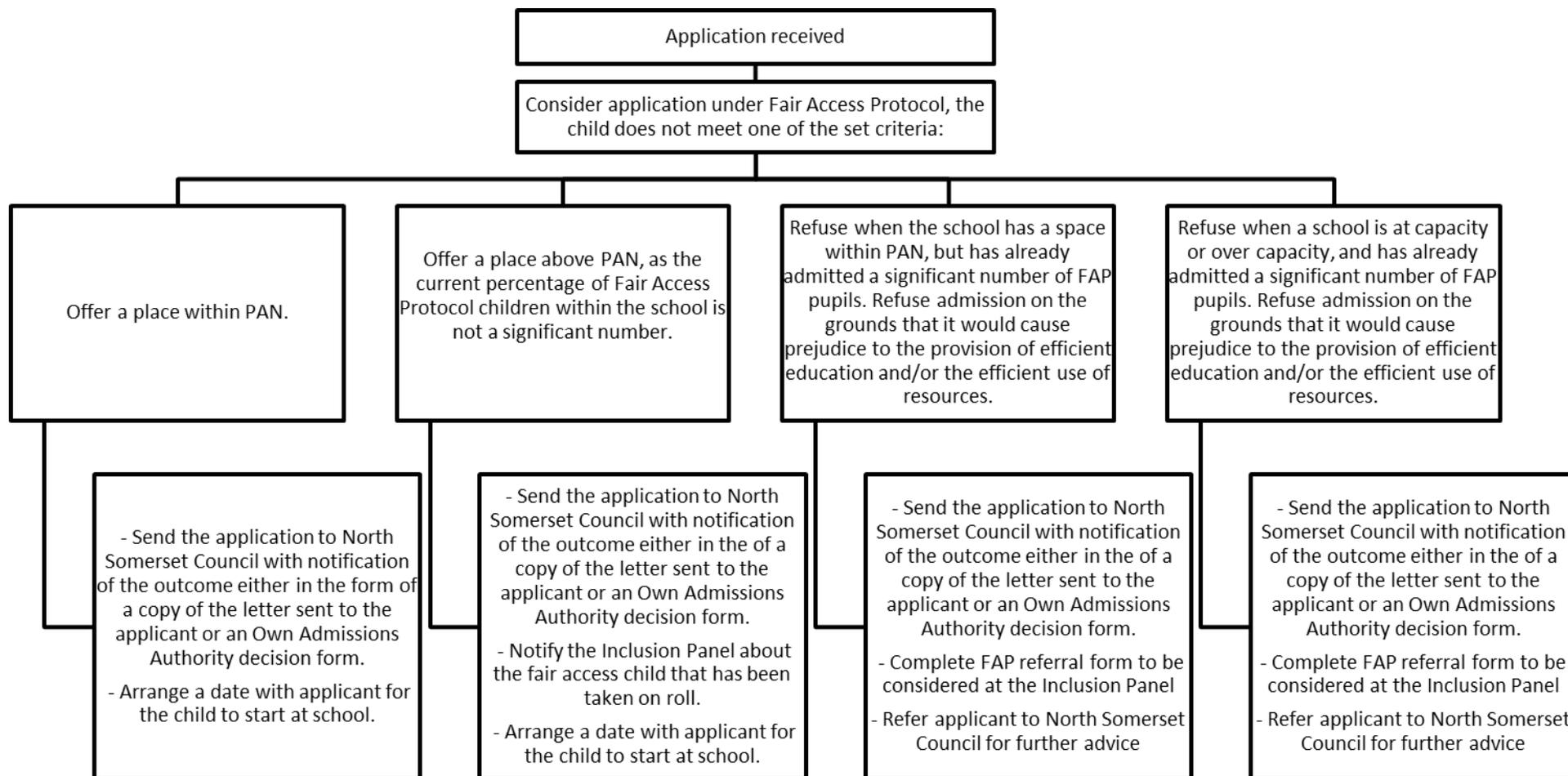
## Fair Access Protocol Cases Scenario 1 – when a child meets Fair Access criteria

All admission authorities must contact the parent/carer to notify them that their application is being considered under the fair access protocol and that this is a separate process from the normal admissions procedures.

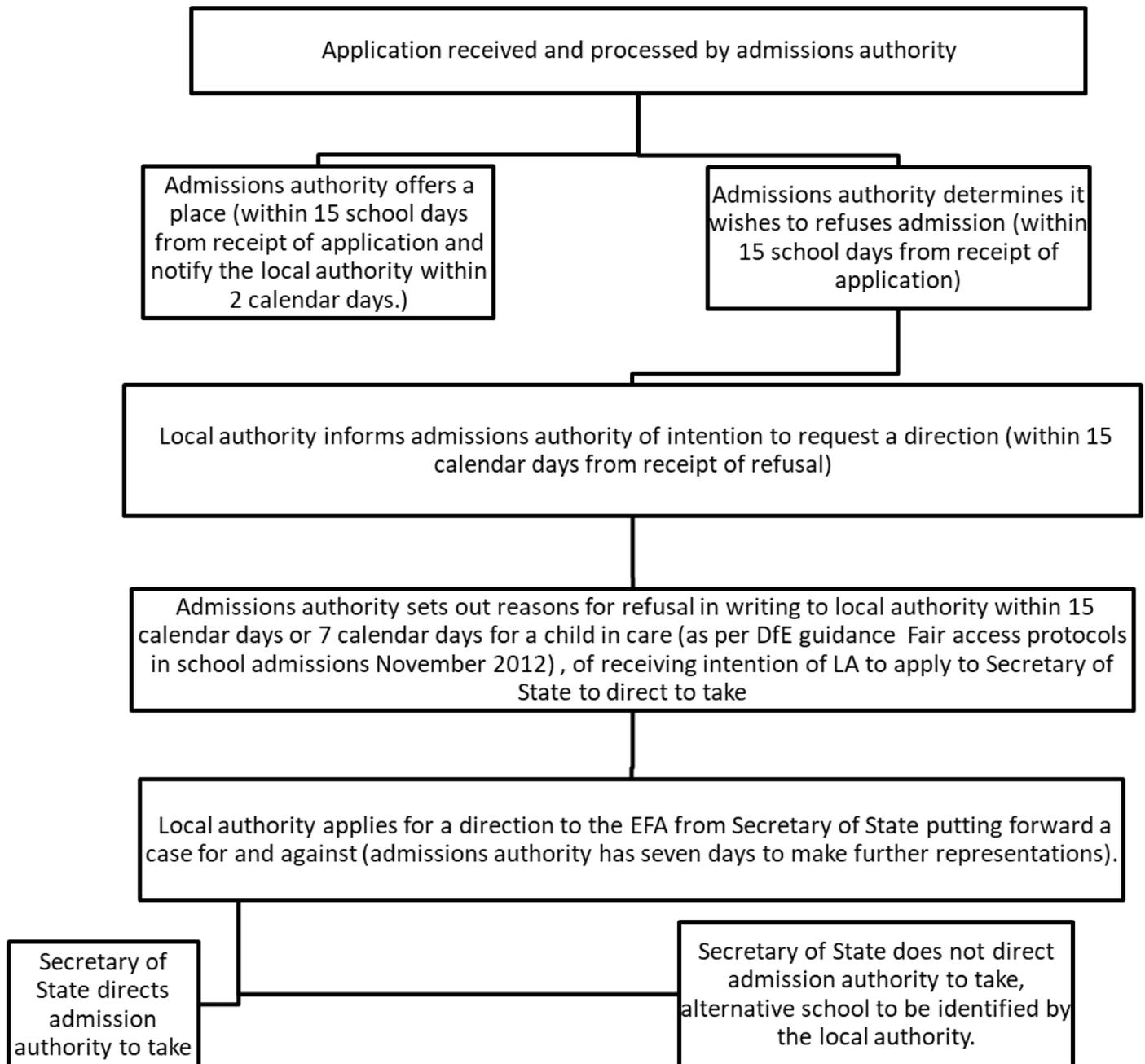


**Fair Access Protocol Scenario 2 – child doesn't meet Fair Access criteria but admitting them would mean that the school has taken a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour.**

All admission authorities must contact the parent/carer to notify them that their application is being considered under the fair access protocol and that this is a separate process from the normal admissions procedures.



Below is the process the local authority will follow when they decide to direct an own admission authority school to admit a child .



## FAIR ACCESS PROTOCOL REFERRAL FORM

Please be aware that parents can ask to see any information supplied, and if it is agreed for a school not to admit this pupil, this information could form part of the school appeal paperwork.

### 1. Child's details

First name (s)

Last name

Date of birth

Year Group

Address

Postcode

Last school/education provision attended

Please give details of any agencies involved with this child/family

(e.g. locality team, social care, educational psychology, YOT, connexions, EOTAS etc.)

### 2. Reason for referral

#### EITHER

**2a.** The admissions authority is unable to offer an in-year transfer school place, even though there are spaces available, as the child has challenging behaviour, and the admissions authority believes they already have a disproportionate number of children who have been permanently excluded from other schools, who have challenging behaviour or who are placed via the Protocol in the relevant year group.

For the purposes of the School Admissions Code, 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

#### OR

**2b.** The admissions authority has refused an in-year transfer school place due to the relevant year group being full, and believes the child falls under the Fair Access Protocol criteria:

**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.  
*Child in Need Plans and Child Protection Plans are plans of help and protection to address safeguarding and welfare needs, where a child has been assessed by the local authority as being a child in need under Section 17 of the Children Act 1989 and/or as suffering or likely to suffer significant hardship under Section 47 of the Children Act 1989. See also statutory guidance Working Together to Safeguard Children (2018) (pages 35 and 48-49).*

**B** children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol.  
The term 'relevant accommodation' is used in relation to the proposed local authority duty to provide support to victims of domestic abuse and their children. For the purposes of this Code 'relevant accommodation' is a safe place to stay for victims and their children

	fleeing domestic abuse. This can include, but is not limited to, refuges, specialist safe accommodation, sanctuary schemes and second stage accommodation.	<input type="checkbox"/>
C	children from the criminal justice system.	<input type="checkbox"/>
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.	<input type="checkbox"/>
E	children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions.	<input type="checkbox"/>
F	children who are carers.	<input type="checkbox"/>
G	children who are homeless.	<input type="checkbox"/>
H	children in formal kinship care arrangements. <i>As evidenced by either a child arrangement order not relating to either birth parent or a special guardianship order.</i>	<input type="checkbox"/>
I	children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers.	<input type="checkbox"/>
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 2021.	<input type="checkbox"/>
K	children for whom a place has not been sought due to exceptional circumstances <i>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.</i>	<input type="checkbox"/>
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.	<input type="checkbox"/>
M	previously looked after children for whom the local authority has been unable to promptly secure a school place. <i>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 of the School Admissions Code 2021) or asking the Secretary of State to consider a direction (under paragraph 3.29 of the School Admissions Code 2021) 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.</i>	<input type="checkbox"/>

**3. Confirmation to applicant - only applicable if the referral has been made under section 2a of this form**

Please tick if you have made the referral to confirm the admissions authority have informed the applicant about this referral.

**4. Full report**

Please provide or attach details of the unique circumstances at the school, which provides the reasoning for the admissions authority to make this referral under the Fair Access Protocol.

**5. Referral made by:**

Name

Job title

School

Date

**6. Completed forms**

Please email your completed form to [SchoolAdmissions.Officer@n-somerset.gov.uk](mailto:SchoolAdmissions.Officer@n-somerset.gov.uk).

<b>Local Authority use only</b>		
FAP referral agreed and sent to the Inclusion Panel to be heard	<input type="checkbox"/>	Select date
FAP referral not agreed	<input type="checkbox"/>	Select date