

**FAIR ACCESS IN
NORTH SOMERSET
2022**

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. For example, where an application has been made to at least one school and this has been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.
- 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.

Locally, schools must also not refuse to admit a child on the basis of difficulties in admitting other family members or on information received from other schools without doing a full assessment to determine whether or not the needs of the child can be met.

3. The North Somerset Context

- 3.1 This protocol covers 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 nor does it include children who are registered as Elective Home Education; 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.

- 3.3 Children for whom English is an Additional Language are not considered to be "challenging" for the purposes of the Fair Access Protocol.

- 3.4 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.
- 3.5 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.
- 3.6 Where a Governing Body receives an in-year application for a child with challenging behaviour for a year group that is not the normal point of entry and does not wish to admit the child, even though places are available, it should refuse the application and refer the case to the School Admissions Team under the Fair Access Protocol. This will normally only be appropriate where:
- the school has a particularly high proportion of children with challenging behaviour or previously excluded pupils on roll in comparison to other schools; and
 - it believes admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

A school must be able to provide evidence of the above.

- 3.7 In the case that the child is without any form of education, the case will be referred to the Primary or Secondary Inclusion Panel for an alternative placement to be found (this does not apply to children registered as Elective Home Education). If a child has a local school place and they are at risk of exclusion, their application is looked at by the Inclusion Panel for extra support of the child. A Fair Access submission in this case is not appropriate, as the child is not considered unplaced.
- 3.8 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). Schools will need to providing evidence with their submission of the numbers of pupils they are supporting per cohort/class with recognised challenging behaviour and their case for not being able to support the child on this occasion.
- 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.

6. Reintegration into Mainstream Schools

- 6.1 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.

The outcome of cases will be recorded by the Inclusion Panel, although the names of pupils will be referenced by initials only.

- 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.
- 8.2 Where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion. The twice excluded rule does not apply to the following children:
- a) children who were below compulsory school age at the time of the permanent exclusion;

- b) children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so);
- c) children whose permanent exclusion has been considered by a review panel, and the review panel has decided to quash a decision not to reinstate them following the exclusion; and
- d) children with Education, Health and Care Plans naming the school.

9. Decisions

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

1. Inclusion Panel to consider the Fair Access Protocol referral and either agree or decline that an alternative placement needs to be found.

2. Inclusion Panel to determine a suitable placement for the child, if relevant.

The decision from Inclusion Panel will be shared with the identified school in writing. 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.

9.2 In line with the School Admissions Code, any decision of Panel is binding on all parties and there is no right to appeal except that of the parent who will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol.

9.3 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.

9.4 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.

9.5 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.

North Somerset Council will direct or refer cases to the Secretary of State as appropriate.

10. Review

10.1 North Somerset Admission arrangements will be subject to regular consultation and review. EEPB will monitor the effectiveness of the Protocol annually or as required and consider how well existing and proposed admission arrangements serve the interests of children and parents in North Somerset.

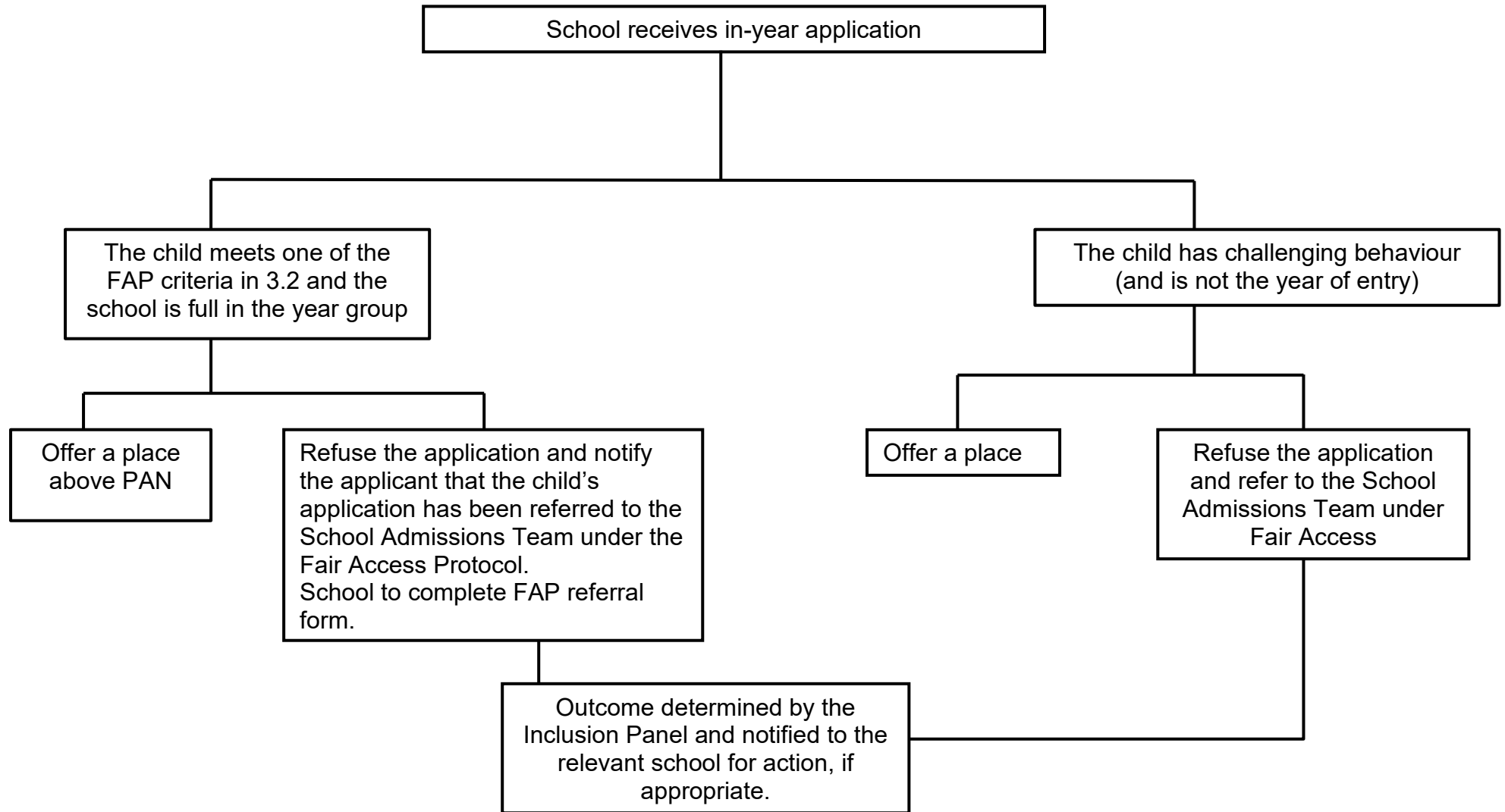
10.2 In the event that the majority of schools in North Somerset can no longer support the principles and approach of North Somerset Council's Fair Access Protocol, they should initiate a review with the Local Authority by sending the Director of Children's Services a

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.

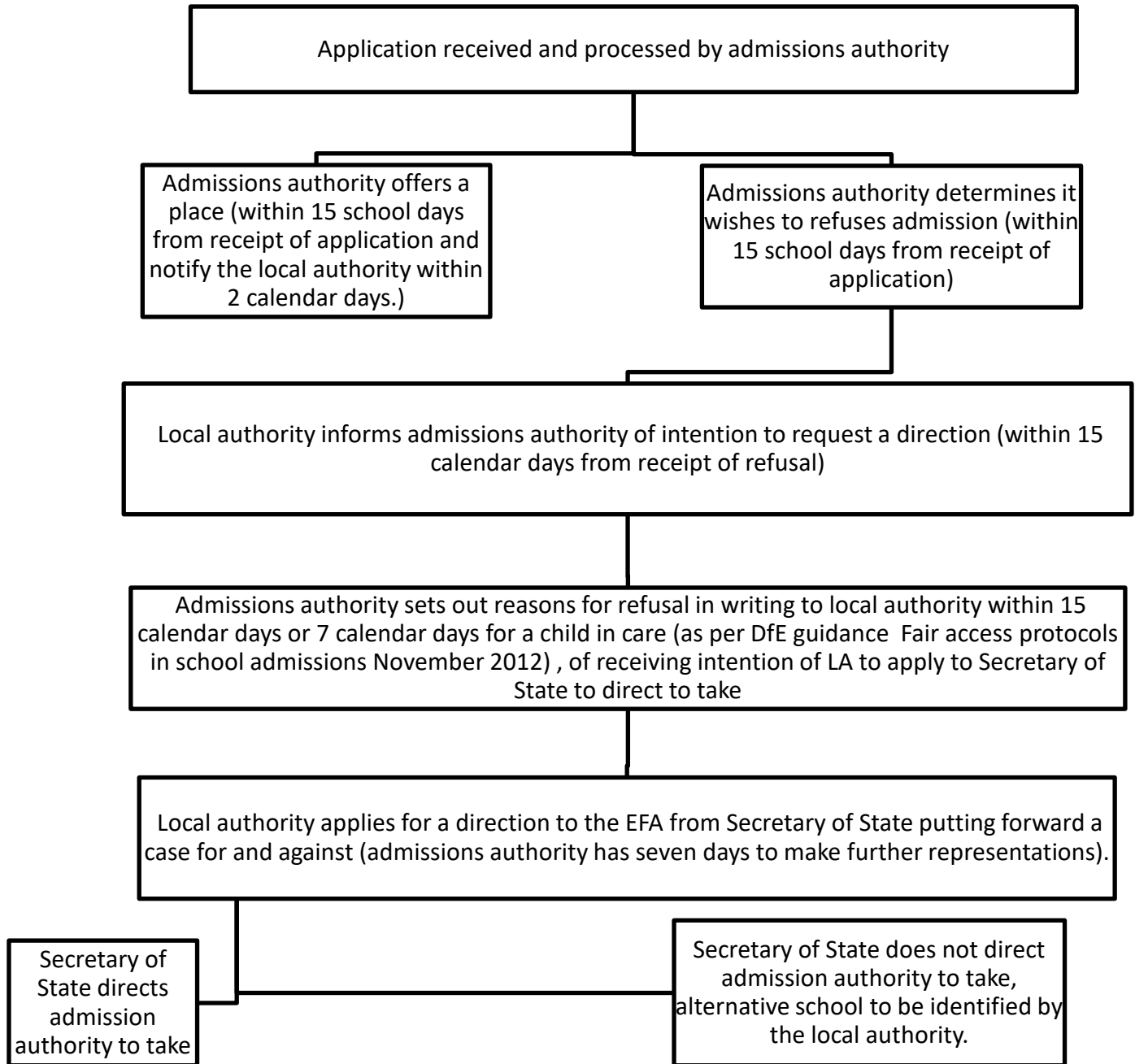
- 10.3 If North Somerset feels the Fair Access Protocol is not meeting the needs of pupils, it will refer the policy to the EEPB for review and their support and action is appropriate.

Fair Access Protocol Cases Scenario – considering an application under Fair Access

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 application is not for the year of entry. This will normally only be appropriate where a school can provide evidence that it has already recently admitted via this protocol or has a particularly high proportion of children with challenging behaviour in that cohort and they can evidence that to admit a further child would be detrimental to other pupils in that class or cohort.

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, 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 nor does it include children who are registered as Elective Home Education.	<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

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.

Please include evidence that the school has already recently admitted via this protocol or has a particularly high proportion of children with challenging behaviour in the relevant cohort and evidence that to admit a further child would be detrimental to other pupils in the relevant class or cohort.



5. Referral made by:

Name

Job title

School

Date

6. Completed forms

Please email your completed form to SchoolAdmissions.Officer@n-somerset.gov.uk.

Local Authority use only		
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