

Fair Access Protocol

(Updated – August 2021)

**To take into account the new Fair Access
protocols from DfE August 2021 and
School Admission Code 2021 'The Code'**

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1) INTRODUCTION

The fair access protocol for the school admission of children who are vulnerable and have been unsuccessful in gaining an in-year school place updated August 2021 to come into effect September 1 2021.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1012993/FAP_Guidance.pdf

To be read in conjunction with:

The Admissions Code 1 September 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf

The Special Educational Needs and Disability Code of Practice: 0-25 years

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

2) SUMMARY

A parent can apply for a place for their child at any school at any time. All applications must be processed by the relevant admission authority in accordance with the School Admissions Code 2021 ('the Code'). When applications are made outside the normal admissions round ¹(and they are not a late application²) they are

¹The 'normal admissions round' covers applications for admission in a relevant age group (also known as the normal year of entry such as reception or year 7) which are made in time for the local authority to offer a school place on National Offer Day. The deadlines for submitting applications to be allocated on National Offer Day are 31 October for secondary school and 15 January for primary school

² Late applications' are applications for entry in a relevant age group which are submitted before the first day of the first term in the admission year but have not been made in time to enable the local authority to offer a place on National Offer Day.

considered in-year applications³. Where it can be demonstrated that reasonable measures have been taken to secure a school place through the usual in-year admissions process and this has not been successful, or where a school place has not been sought due to exceptional circumstances, a child may be eligible for referral to the Fair Access Protocol (FAP). The purpose of a FAP is to ensure that vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible, minimising the time the child is out of school.

Admission authorities and local authorities **must** comply with the relevant law, and act in accordance with the provisions of the Code.

Main points

- FAPs exist to ensure that vulnerable children, and those who are having difficulty securing a school place in-year, are allocated a place as quickly as possible.
- FAPs **must not** be used in place of the usual in-year admissions process. A parent can make an in-year application at any time and is entitled to have their preference met wherever possible, as well as the opportunity to appeal a decision when a place is not offered.
- Every local authority **must** have a FAP in place. Once it is agreed with the majority of schools⁴ in its area, all admission authorities **must** participate in it.
- FAPs **must** only be used for unplaced children that meet the prescribed categories set out in paragraph 3.17 of the Code and pages 5-6 of the Fair Access Protocol 2021.
- Admission authorities, school leaders and local authorities should work collaboratively in making decisions under the FAP. They should take into account the needs of the child and the views of the school where the child might be placed.
- There is no duty to comply with parental preference when allocating places through the FAP but parents' wishes should be taken into account.
- When seeking to place a child through the FAP⁵, no school (including those with places available) should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour⁶, or who are otherwise being placed via the FAP.

³ An application is an in-year application if it is for the admission of a child to a relevant age group but it is submitted on or after the first day of the first term of the admission year, or if it is for the admission of a child to an age group other than a relevant age group.

⁴ Unless otherwise stated, in this guidance the term 'schools' should be taken to mean all schools to which the Code applies, including academies.

⁵ It is the admission authority of a school that has responsibility to make admission decisions for their school/s. Therefore, any references to 'school' or 'schools' in this guidance, also refers to the school's admission authority, where this is different to the school's governing body. Information on the admission authority for each type of school in England can be found in paragraph 11 of the Code.

⁶ Further information on challenging behaviour can be found on pages 9 to 10 of the Fair Access Protocol 2021

- Admission authorities **must** admit children when asked to do so in accordance with the FAP. Where an admission authority fails to comply with the FAP, they may be directed to do so ⁷. Further information can be found on page 11 of the Fair Access Protocol 2021.
- The FAP is a mechanism developed by the local authority in partnership with all schools in their area. Its aim is to ensure that vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible. Every local authority **must** have a FAP in place. Once it has been agreed by the majority of schools in its area⁸, all admission authorities **must** participate in it.
- FAPs play a key role in helping to keep children safe by ensuring the most vulnerable children are able to access education as quickly as possible. Referral to the FAP should be seen as the last resort to secure a school place for a child. Where possible, children should be placed in school through the usual in-year admissions process in the first instance.
- FAPs should provide a fair and transparent system to ensure that all schools share the collective responsibility of helping the most vulnerable, by admitting their fair share of children being placed via the FAP. This includes supporting those children who have been permanently excluded from other schools and those who display challenging behaviour.

3) CHILDREN ELIGIBLE FOR FAIR ACCESS AND NEW NATIONAL PRIORITIES

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 Plan⁹ or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the FAP;

⁷ Sections 96 and 97 of the School Standards and Framework Act 1998 sets out the powers of local authorities to direct the governing body of any maintained school, for which they are not the admission authority, to admit a child in their area, even if that school is full. Paragraph 3.29 of the Code sets out the Secretary of State's powers to direct the admission of any child to an academy under the academy's funding agreement.

⁸ In agreeing a local FAP, the view of more than half of the total number of schools in the area should be regarded as the majority.

⁹ 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 to 49). Where a local authority is advised that a child who has moved into the local authority had a Child in Need Plan or Child Protection Plan previously and meets the criteria outlined, this information may need to be checked with the previous local authority.

- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the FAP;
- 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 arrangements¹⁰;
- 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 FAP in accordance with paragraph 3.10 of the Code; *
- k) children for whom a place has not been sought due to exceptional circumstances¹¹;
- l) children who have been out of education for 4 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 place¹².

4) RESPONSIBILITIES

4.1 The responsibilities of the Local Authority

The local authority must ensure that a local fair access protocol is in place and that it has been agreed by a majority of schools in the locality.

The local authority must ensure that all the categories of pupils covered by fair access are clearly identified in the protocol.

¹⁰ As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.

¹¹ It is for the local authority to decide whether a child qualifies to be placed via the FAP on this basis, based on the circumstances of the case.

¹² In most cases, use of the FAP should be unnecessary for a previously looked after child. Local authorities are expected to secure a school place promptly for such children and for admission authorities to cooperate with this. Local authorities should consider swift use of their general powers of direction or should consider asking the Secretary of State to consider issuing a direction (as set out in paragraphs 3.26 to 3.29 of the Code) where a school place for a previously looked after child cannot be agreed with an admission authority promptly.

The local authority must, when approached by a school who have refused an in-year admission of a pupil with challenging behaviour, decide whether that pupil should be considered under the fair access protocol arrangements.

The local authority must monitor the effectiveness of the operation of the protocol and consider how well the existing and proposed admission arrangements serve the interests of children and parents within the local authority area.

The local authority is required to report to the schools' adjudicator on how well the protocol has worked and how many children have been admitted to each school under the protocol.

The local authority is required to intervene where a panel is unable to make a decision upon the placement for a child who meets fair access criteria, in order to minimise the time that that child is out of school. This will commence from day 6 of the panel decision.

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.

4.2 The responsibilities of the Behaviour and Attendance School Partnerships

The partnerships should work collaboratively with the local authority in order to ensure that children who meet the criteria in this protocol are placed quickly in suitable provision, whether this is mainstream provision or alternative provision.

The partnerships should use their devolved resources to make appropriate provision for vulnerable learners who need extra support as appropriate.

The partnerships should operate in a climate of mutual trust to ensure that children referred to panel meetings under the protocol are placed fairly and equitably, in accordance with a consideration of the best educational interests of the child including the potential impact on the needs of the other children in the school of admitting the pupil.

There is no legal duty for the partnerships to comply with parental preference in allocating a place, but careful consideration should always be given to this, when making decisions.

Where a school may wish to challenge a place for a young person normally this will be on the basis of achieving equitable distribution of young people with challenges. The partnership constitution must specify that arrangements are in place to allow a school to challenge any proposal to admit a child/young person under the fair access protocol, including situations where the school may feel that the allocation is inequitable. In coming to any decision the partnership must act in accordance with the fair access protocol and the principles set out in the School Admissions Code 2021.

4.3 The responsibilities of individual schools

Schools must ensure that they send a representative to partnership panel meetings where a fair access place is being considered for a pupil to attend that school. The representative must have the authority to recommend to the admission authority that a

place be offered. (The precise pattern and frequency of attendance required will be determined by the constitution adopted by each partnership.) Primary schools may have to rely on collaborative arrangements to send a delegate.

Schools must not cite oversubscription as a sole reason for not admitting a child under the protocol. The only exception to this is when admission would breach infant class size regulations and the child to be admitted could not be treated as an excepted pupil.

Any school which is subject to a partnership recommendation to admit a pupil must consider this promptly and provide a response within 5 school days if they feel the placement is not equitable.

Schools 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.

Schools have a duty to work collaboratively, regardless of the type of school.

5) THE REFERRAL TO THE FAIR ACCESS PROTOCOL

An in-year admissions application form including additional information form is used for all in year applications. This and the fair access protocol are available to download on the school admissions page of the council website:

<https://beta.bathnes.gov.uk/apply-year-school-place>

In-year applications are made directly to the relevant admission authority and must be responded to in line with School Admission Code 2021. If the child is refused a place the school must notify Children Missing Education Service (CMES) who will review the case and investigate further.

Managers within the Education Inclusion Service will determine if the pupil is eligible for fair access using the criteria set out in the Fair Access protocol 2021 and Schools Admission Code 2021 and then make the referral to the Area Panel Coordinator.

Where it has been decided that a child is to be placed via the FAP, parents should be notified of this and a school place must be allocated to that child within 20 school days.

FAIR ACCESS DECISION PROCESS

The Area Panel Coordinator will notify the parents that their child will be placed via the FAP and inform them of the date that the Fair Access panel will be convened.

The Area Panel Coordinator will prepare a summary of the information collated about the young person who has been referred under this protocol.

If required, the school the young person last attended (within B&NES) will be invited to attend and present information: -

The Area Panel Coordinator will place the pupil on the appropriate partnership panel agenda.

Pupil status within the fair access criteria will be recorded on the partnership agenda.

The partnership will consider each fair access case presented and determine the appropriate school placement with the necessary support.

If the partnership is unable to agree on a school, the process (for example a points-based system) identified in the partnership's constitution will be used to determine the placement. Decisions must not be deferred or delayed.

The Area Panel Coordinator will confirm the panel decision in writing to the parents/carers and the admission authority within 5 school days of notification. The letter will be copied to the Children Missing Education Service (CMES), Admissions and Transport (A & T) Team and the named school.

Any school which is subject to a partnership decision to admit a pupil must consider this promptly and provide a response to the partnership chair within 5 school days of receiving the written notification if they feel the placement is not equitable.

The B&NES Children out of Education Panel (COOEP) will monitor any written response from the school and the decision taken by the partnership with emphasis on finding an early solution to prevent further delay for the child or young person.

B&NES COOEP will take the necessary and appropriate action if the partnership cannot resolve the fair access admission case by issuing a direction notice to the school of the intention to refer to the Schools Adjudicator or Education Funding Agency (EFA).

If the pupil is not admitted within 5 school days B&NES will notify a maintained own admission authority school of the intention to direct admission or in the case of an academy or free school B&NES will apply to the EFA for a direction.

If it becomes necessary for B&NES to issue a direction, the B&NES allocated officer will identify the most appropriate school, using the following criteria:

- a.** The educational, social, emotional and behavioural needs of the child;
- b.** The decision made by the partnership;
- c.** The potential impact on the needs of the other children in the school of admitting the pupil or any specific concerns raised by the named school.
- d.** The preference of the parent;
- e.** The views of the child;
- f.** Geographical accessibility and availability of transport;
- g.** Whether siblings already attend the school;

- h. Advice received and the risk assessments completed by the last school the child attended;
- i. Intelligence from a range of services about patterns of social relationships within the school and the wider community, to protect the safety and well-being of all parties;
- j. The points system (if used by the Partnership) and patterns of placement of vulnerable learners across the schools in the Partnership.

While the child/young person is still out of education, the appropriate Lead Officer will arrange alternative provision. The cost will be borne by the partnerships.

6) CONSIDERATION OF A MANAGED MOVE

For children who DO NOT meet Fair Access criteria, as they already have an accessible school place, then a managed move protocol should be considered.

Requests for children who trigger the fair access criteria but have an accessible school place will not be regarded as fair access. These cases will be dealt with as follows:-

Parents will initially be informed that they should contact their child's current school so their request can be discussed and planned as a managed move. The current school will then follow the B&NES Managed Move Protocol.

If a managed move cannot be organised within a reasonable timeframe [i.e. three weeks] and the parent still wishes to request a place, the in-year admissions process will be used. At the same time as processing the application the Admissions Authority will inform the partnership Area Panel Coordinator that an admissions request has been received. This will enable the case to be placed on the agenda for the next Panel meeting for consideration of additional support if required.

When the Admissions Authority notify the parent of the result of their in-year application they will also inform the parent a referral has been made to the partnership Behaviour and Attendance Panel and may receive contact from the Student and Family Support Team to help achieve a successful transition into a new school. [Please refer to Managed Move Protocol.](#)

7) CHILDREN IN CARE AND CHILDREN WITH AN EHCP

The School Admission Code 2021 states that Fair Access criteria do not apply to looked after children, and children with an EHCP:

Fair Access provision will not apply to a looked after child, or a child with a statement of special educational needs or Education, Health and Care Plan naming the school in question, as these children **must** be admitted. These applications should be discussed with the relevant Teams at B&NES; SEND and Virtual School Head.

8) PROCESS FOR IN-YEAR APPLICATIONS

1. School receives an in-year application.
2. The application must be processed in accordance with the usual in-year admissions process.
3. A written response must be sent to parents notifying them of a) an offer of a place or b) a refusal including the reason why admission was refused; information about the right to appeal; the deadline for lodging an appeal and the contact details for making an appeal. The school should aim to notify the parents of the outcome of their application in writing within 10 school days, but they must be notified in writing within 15 school days
4. Schools to notify an offer of a place to B&NES A & T Admissions_Transport@bathnes.gov.uk or refusal of a place to B&NES CMES ChildrenMissing_EducationService@Bathnes.gov.uk .
5. The Local Authority will investigate and review all refusals and decide whether the child meets the Fair Access criteria.
6. If the child meets the Fair Access criteria, the Area Panel Coordinator will advise the parent that their child will be placed in a school via the Fair Access Protocol and add the child's information to the appropriate Fair Access Panel agenda(s).
7. A decision on where to allocate a school place for the child will take place at the Fair Access Panel.
8. The Area Panel Coordinator, on behalf of the panel's chair, will notify the parent in writing of the decision within 5 days of the panel. A copy of this notification will be sent to the allocated school, A & T, CMES and any intervention and support provider who has been allocated.
9. The allocated school will liaise with the parent on a start date for their child