

Solihull Secondary Fair Access Protocol & Terms of reference

September 2024

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.

SMBC-SFAP-Solihull-secondary-fair-access-protocol-terms-of-reference-2024-09

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.

Under the school admissions code, in the standard admissions process, 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

Referrals to the fair access panel must be accompanied by a fully completed referral form (Appendix a) 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. It is the responsibility of the referrer to confirm that the paperwork is accurate and transparent. Where referrals are made by an alternative provision these should be checked for accuracy by the EPAS team.

The panel will consist of representatives from

- All Solihull secondary schools or collaboratives. The representative from the school must have decision making capacity as detailed in the terms of reference.

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- AP provisions representatives relevant to the meeting.
- School Admissions
- EPAS
- Any other LA team relevant to the agenda.

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, or the identified school refuses to admit, 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 EPAS team who will start the school attendance order process. The order will name the school identified through the admissions process, where an application has been received or the FAP process where an application was not made. 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 unless otherwise stated in this document.

Fair Access Protocol process

Where a formal application for a school place has not been submitted, it cannot be processed under the normal admissions process. If the child does not have a suitable form of full-time education, a referral can be made to the panel by the EPAS team to identify a school to be named in a School Attendance Order. Any school identified outside of the panel meeting must be added to the agenda of the next panel for ratification.

Standard admissions applications

Where the admissions process has not delivered an outcome and the case is referred to the panel consideration will be given in the following way.

The child will be placed at the closest school possible. The closest school will be identified using straight line distance from the child's home address to the main pedestrian gate of the school. If the closest school has already admitted a child in any year group via the fair access process for standard admissions applications, the next closest school will be identified. This process will continue until a school is identified. The closest school will not be asked to take an additional child under the fair access standard admissions process until

SMBC-SFAP-Solihull-secondary-fair-access-protocol-terms-of-reference-2024-09

all schools included in the protocol have taken an admission from this category. It will be deemed disproportionate for a school to take a second child via fair access before all schools have taken their first child. Applications can be made for travel assistance where deemed appropriate and in line with travel assistance policy.

To avoid a child being without a school place for an extended period of time, this process can be carried by the admissions team directly with the identified school in advance of the formal protocol meeting. All information known to the admissions team will be shared with the identified school. A response to the request is expected within five school days. If all identified schools decline to admit the child, the case is referred to the FAP panel.

Any standard admission agreed outside of the formal protocol meeting will be reported and shared at the next panel meeting.

Where a school does not respond to the Local Authority request to consider an admission within 5 school days, they 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 Local Authority being required to make interim provision the FAP Panel can agree that the council recharge the school with the cost of the interim provision.

Year 11 standard admission applications

Referrals to the panel will continue for children in the Autumn term of year 11, to be placed in the closest school identified as per the process for standard admissions. This will be considered on a case-by-case basis and take account of education received by the child to this point but with regard to 2.9 of the School Admissions Code (2021) 'Allocating Places'.

Applications received in the Spring and Summer terms of year 11 will be referred directly to The Orbital Project. This provision may enter children for exams where appropriate and prepare the child for further education.

Children returning from elective home education.

For a child wanting to return to a school-based education following a period of elective home education, an admissions application must be submitted. If the application does not result in an offer at the preferred schools and the elective home education has been deemed unsuitable, then the child will be referred to the Fair Access Panel. A child returning from home education that has previously been on roll at a Solihull secondary school should return to the previous school. This return will be supported by the EPAS team where necessary.

Where the school is not in agreement or has demonstrated that allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others such as staff or pupils in the school. They will be added to the role of the school for the school to make a referral to single panel for alternative provision or arrange a managed move to another school.

Where parent is not in agreement, the school will be required to hold a place whilst the EPAS team follow the School Attendance Order process. School will not be required to put the child on roll until the attendance order is complete or until the parent agrees to send their child to the school and makes arrangements for their child to start.

Children who have never experienced a school-based education in a secondary school and therefore have no previous school to return to, will follow the process of determining the closest school detailed in the Fair Access standard admissions section above. The admission will be supported by the EPAS team.

Challenging Behaviour

Behaviour is described in the School Admissions 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.

Referrals to the panel for children deemed to have challenging behaviour but have not been permanently excluded will follow the process outlined in the fair access standard admissions protocol for determining the closest school. Where the panel deem appropriate, a referral to Solihull Academy can be made.

Children returning from alternative provision - Children not on the roll of a school who need to be reintegrated into mainstream education or who have been permanently excluded but are ready to take up their mainstream entitlement.

Each school will agree to accommodate a child returning from alternative provision that is referred to the panel. If all schools have taken a child returning from alternative provision in the academic year and further referrals are received, the process can be repeated by agreement at the next Fair Access Panel. It would be deemed disproportionate for one school to take a second child before all schools have taken one child returning from alternative provision unless there are exceptional reasons why the child cannot be admitted to the remaining schools. Where the identified school is not within walking distance for a secondary age child, an application for transport assistance can be made.

The referring provision or referring team can make recommendations as to which type of school they think appropriate, or they may have compelling reasons why they deem a not to be an appropriate placement for the child. These recommendations must include discussions with the identified school prior to the fair access panel.

A referral should include fully completed referral paperwork detailing any restorative work that has been carried out with the child whilst in attendance. If schools are concerned about a particular referral or if the referring provision are not successful in identifying a school, the referral will be made to full panel. The identified school not agreeing to placement must provide evidence to support their decision.

The current provision should make the referral and start the discussions, the meeting prior to the child being deemed ready to take up their mainstream entitlement. The identified school will then work with the provision to ensure a smooth transition package for the child at the appropriate time. This will be individually agreed dependent on the child's needs. Once the child is deemed ready to take up their mainstream entitlement, the panel will be notified of the on roll date at the next meeting.

Managed moves

Managed moves are a voluntary agreement between two head teachers. The parent must also be in agreement. Where a managed move has been deemed successful and a permanent move to a new school is agreed and 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 evidence all children allocated by the panel, by closest school and year group. Information on exclusions will also be provided.

The panel can review the effectiveness of the data provided at any time and request changes to the data provided. Amendments to the data provided will not invoke a review 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.

¹ *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

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 the identified school cannot reach agreement under the normal admissions process **and** the application falls into one of the listed vulnerable 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 for children returning to mainstream provision.
- Referrals from schools that have agreed a managed move but there is a waiting list for admission to that year group.

SMBC-SFAP-Solihull-secondary-fair-access-protocol-terms-of-reference-2024-09

- Referrals from the EPAS team where an admissions application has not been submitted but have been identified as not receiving a suitable full time education.

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

- Reasonable measures undertaken by the Local Authority 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.
- Referral paperwork from the current alternative provision.

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. This does not include children returning from alternative provision where a transition period has been agreed prior to the child going on the roll of the school.

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 Solihull Council staff on:

- Pupil numbers
- Requests for mid-year admissions
- Managed moves
- Permanent exclusions
- School placements made under the FAP.

Membership of the panel

The panel consists of:

- All Solihull secondary head teachers and principals or their nominated representative with decision making capacity.
- Solihull alternative provision providers appropriate to the age of the child.
- School admissions team

SMBC-SFAP-Solihull-secondary-fair-access-protocol-terms-of-reference-2024-09

- EPAS team
- Other service representatives as pertinent to the agenda, for example 0-25 SEND service, school place planning, school improvement or school transport.

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.

The panel will meet 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). Reasonable notice of non-scheduled meetings will be provided.

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.

Agenda items for the purpose of information sharing from other Local Authority meetings such as SSSAB or single panel are permitted.

Decisions of the panel

The panel shall decide appropriately for each case referred and schools must agree to abide by the decisions of the panel. If the panel agrees to a placement for a student at a school that is not represented at the meeting, their decision is binding, (see FAP Panel section for information regarding a Secretary of State direction) and the school must admit the student.

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 must be recorded in the minutes. However, Panel must agree an alternative school for placement. Whilst prejudice may be an argument at several schools, the prejudice to a pupil of not having a school place would ultimately be higher. Schools cannot cite oversubscription as a reason for not accepting pupils on their roll under the protocol. Where a school expresses compelling reasons for not being able to admit a

SMBC-SFAP-Solihull-secondary-fair-access-protocol-terms-of-reference-2024-09

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.

Decisions made by the panel are binding on the school. The identified school must admit the child within the specified timescales. If the school identified to admit refuses to do so, Solihull Council is expected to ask the Secretary of State to issue a direction. Solihull Council will seek the support of the Fair access panel before proceeding to direction.

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.

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, are 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 specified category, before all schools have admitted a Fair Access child in the same category. Schools with available places should not be expected to admit all children being placed via FAP.

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. The final Fair Access meeting agenda in July will include a review of the previous year and the effectiveness of the protocol. The first meeting each academic year will be face to face, the remaining meetings are likely to form a mixture of online and face to face.

List of Appendices

SMBC-SFAP-Solihull-secondary-fair-access-protocol-terms-of-reference-2024-09

Appendix A – FAP referral form

Appendix B – School Admissions referral form

Appendix C – Exclusion Data

Appendix D – Referral Data

Appendix E – Current numbers on roll