

Cornwall Fair Access Protocol



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1. Purpose, scope and principles

Basis

- 1.1.** This Fair Access Protocol ('the FAP') is written in accordance with the School Admissions Code 2021 ('the Code') and the supporting guidance from the Department for Education: [Fair access protocols: advice for local authorities and school admission authorities](#)

Purpose

- 1.2.** The purpose of the FAP is to ensure that vulnerable children and those who are having difficulty in securing a school place in-year are allocated a place as quickly as possible.

Scope

- 1.3.** This FAP applies to in-year¹ admissions for eligible children as listed in the Code. It applies to state-funded mainstream primary and secondary schools in Cornwall.
- 1.4.** A child may be eligible for referral to the FAP where it can be demonstrated that reasonable measures have been taken to secure a school place under 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.
- 1.5.** The FAP must not be used in place of the usual in-year admissions process. A parent/carer can make an in-year application at any time and has the opportunity to appeal a decision when a place is not offered.
- 1.6.** With the exception of children who have been permanently excluded from their previous school or are returning from the criminal justice system, an admission authority must not refuse to admit a child following an in-year application on the basis that they would be, or they believe they would be, eligible to be placed via the FAP. The application must be processed in accordance with the usual in-year admissions process.

Compliance and collaboration

- 1.7.** Admission authorities, school leaders and the Local Authority should work collaboratively in making decisions under the FAP.
- 1.8.** Participation by schools in the FAP includes:
- making available a representative to participate in discussion and decision-making on placing children referred to the FAP; and
 - admitting pupils when asked to do so in accordance with the FAP, even when the school is full.

¹ 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 in the "normal admissions round".

Definition of challenging behaviour

- 1.9.** 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. It would be expected that this behaviour would significantly interfere with the pupil's or other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.
- 1.10.** Admission authorities should consider the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability. All schools have a duty to make reasonable adjustments for students with disabilities. Schools should be aware that a child who displays challenging behaviour may do so as a result of their disability or any unmet needs. Schools must therefore consider whether any reasonable adjustments can be put in place to support the needs of a particular child when considering whether admission should be refused on these grounds. The impact and effectiveness of these adjustments must also be taken into account in managing presenting behaviours. For example, where a school would have to provide teaching assistant support and put in place an agreed behaviour plan for a pupil with autism, the impact of these arrangements must be factored into a decision over whether the child's behaviour would meet the criteria to be considered challenging.

Information gathering

- 1.11.** School application and admission forms are limited to asking for information that is necessary to identify the child and to prioritise according to the school's oversubscription criteria if that is necessary. It cannot lawfully ask for further information, which would include questions relating to Fair Access eligibility.

Decision-making

- 1.12.** Due regard must be given to the Children's Rights under the United Nations Convention on the Rights of the Child (UNCRC). These include, but are not limited to, the right to Education (Article 28, UNCRC) and goals to Education (Article 29) and for decisions to be made in their Best Interests (Article 3), rights to non-discrimination (Article 2), to receive support to develop to their full potential (Article 6), receive special support to recover from trauma (Article 39) and to have their views heard and taken seriously in relation to any matters affecting them (Article 12).
- 1.13.** Admission authorities, school leaders and the Local Authority should take into account the needs of the child and the views of the school where the child might be placed.
- 1.14.** There is no duty to comply with parental preference when allocating places under the FAP but parents' wishes should be taken into account.
- 1.15.** When seeking to place a child under the FAP, 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 behaviour, or who are otherwise being placed via the FAP.

- 1.16.** A FAP must not require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school.

Waiting lists

- 1.17.** Children allocated under the FAP have priority over children on a waiting list.

Interaction with the appeals process

- 1.18.** The appeals process is independent from the FAP. Where a child has been referred to the FAP, their parents retain the right to appeal against the refusal of a school place.
- 1.19.** Where a child is refused a place at the school following consideration under the FAP they are still required to admit that child if an appeal is upheld. In all circumstances, the decision of an appeal panel is legally binding.
- 1.20.** The fact that an appeal has been lodged for a child is not a reason to delay the FAP process.
- 1.21.** Where an appeal has been refused by the independent panel for a child who meets the FAP criteria, a place may still be allocated at that school under the FAP.

Timescales

- 1.22.** Where it has been agreed that a child will be considered under the Protocol, a school place must be allocated for that child within 20 school days (in accordance with the Code).
- 1.23.** Schools must respond to Fair Access Level 1 requests within two school days and Fair Access Level 2 of the Protocol in five school days.

Admission to school following the allocation of a school place under the FAP

- 1.24.** Once a school place has been allocated, parents/carers should be notified and arrangements made for the child to start at the school as soon as possible to avoid any gaps in their education. The school and/or the Local Authority should also make any necessary arrangements that may be required to ensure any needs of the child are met, and that they have a successful start at the school. Whilst some time may be required to allow schools to put in place any arrangements, they should be made quickly to ensure the child can start school as soon as possible.
- 1.25.** Where the child is at an Alternative Provision Academy (APA), a period of review and continued support will be agreed as necessary between the school and the APA to support a successful reintegration.

2. Eligible children

2.1. The following groups of vulnerable children are eligible for placement under the FAP²:

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 ³	Level 1
b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol	Level 1
c) children from the criminal justice system	Level 2
d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are able to be supported in mainstream education	Level 2
e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions	Level 1
f) children who are carers	Level 1
g) children who are homeless	Level 1
h) children in formal kinship care arrangements (as evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order)	Level 1
i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers	Level 1
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	Level 2
k) children for whom a place has not been sought due to exceptional circumstances <i>If the Local Authority is not satisfied that parents/carers are providing a suitable education to a child of compulsory school age otherwise than at school and considers it appropriate for the child to attend school, they can issue a School Attendance Order⁴. These children are deemed to fall into this category.</i>	Level 1

² As per the [School Admissions Code 2021](#).

³ 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.

⁴ As set out in legislation under sections 437 to 444 of the Education Act 1996

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. <i>Whilst the Code specifies that this provision is for children who have been out of education for four weeks or more, a request may still be made to a school ahead of the four weeks being exceeded to ensure there is no undue delay.</i>	Level 1
m) previously looked after children for whom the local authority has been unable to promptly secure a school place <i>However, 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.</i>	Level 1

2.2. The FAP does not apply to:

- children in care⁵;
- children with an Education, Health and Care Plan;
- admissions in the normal admissions round including late applications in the normal round;
- admissions to Year 12 or 13;
- children who already have a mainstream school place within reasonable travelling distance of the home address;
- children who do not fall into any of the categories under Section 2.1;
- children whose families deliberately keep them out of school or purposely endeavour to meet a criterion in the hope of improving their chances of getting a place at their preferred school under the FAP.

⁵ Children in Care are expected to be admitted unless admitting the child would seriously prejudice the provision of efficient education or the efficient use of resources. This is a higher threshold than for other children.

3. Assessing eligibility and suitable placements

- 3.1.** The FAP will operate at two levels. The level applied to each category is indicated in the table in Section 2.1.
- 3.2.** The Local Authority's School Admissions Team will decide whether an unplaced child is eligible to be placed under the FAP and under which category.

Eligibility under Level 1

- 3.3.** Children in the categories identified as Level 1 in Section 2.1 will be eligible for referral to the FAP if they remain unplaced following normal in-year admissions procedures.

Eligibility under Level 2

- 3.4.** Placements for children under Section 2.1 (c) and (d) will be automatically handled under the FAP Level 2:
- children from the criminal justice system;
 - children in alternative provision who need to be reintegrated into mainstream education (only where the child does not already have a mainstream school place within reasonable distance of the home address);
 - children who have been permanently excluded from their most recent school but who are able to be supported in mainstream education.
- 3.5.** Children with challenging behaviour who are on a school roll within reasonable distance of the home address for whom a new school place is requested cannot be considered under the FAP. They could, however, be considered for an off-site direction or managed move, which are arrangements outside the FAP and led by schools.
- 3.6.** Where an admission authority does not wish to admit a child in-year because it has good reason to believe that the child may display challenging behaviour it may refuse admission and refer the child to the FAP under 3.10 of the Code. Admission authorities may only do this if:
- the child does not have a school place within reasonable distance of the home address and cannot, therefore, be considered for an off-site direction or managed move; and
 - 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 can be strongly evidenced that admitting another child with challenging behaviour would seriously prejudice the provision of efficient education or the efficient use of resources.

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; or
- having a disability.

4. Identifying a suitable placement

4.1. A suitable school placement under the FAP will be identified with consideration of the following factors:

- the best interests of the child;
- whether the child has any particular needs and which school might best be able to meet those needs;
- connections with the school which may aid transition and attendance, for example previous attendance or having a sibling on roll or a sibling that has been allocated a place;
- for children falling under 2.1 (k) the identified school will normally be the last school attended unless this is no longer suitable by reason of distance, age or other exceptional factors, in which case it will be the nearest school suitable to the child's age group at which a place can be made available;
- parental preference, unless there is evidence to support refusing parental preference, such as a previous serious breakdown of the relationship between the family and the school or the child has been twice permanently excluded in the last two years (with reference to 4.2);
- the travelling distance from the home address including its reasonableness and the potential transport arrangements and cost;
- whether or not the school is the designated school for the home address and the availability of places at other schools within reasonable distance of the home address;
- the school's capacity to support further admissions;
- the Infant Class Size regulations;
- all current cases due to be considered for the same year group and the impact of taking more than one child under the Protocol at the same time;
- the number of admissions to the relevant year group in the preferred school in the 'rolling year' under the FAP as recorded on the Rolling Record (Level 2 only);
- the views of other agencies where possible and appropriate;
- any other relevant contextual information. This might include managed moves or off-site directions into the year group when considering Level 2 placements.

- 4.2.** 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:
- children who were below compulsory school age at the time of the exclusion;
 - children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so);
 - 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
 - children with an Education, Health and Care Plan naming the school.

5. Level 1 processes for placement

- 5.1.** The School Admissions Team will write to the identified school or the admission authority for the school requesting placement of the child under the FAP.
- 5.2.** Schools must respond within two school days of a direct request under the FAP Level 1.
- 5.3.** If a secondary-age child remains unplaced after action under the FAP Level 1, in exceptional circumstances a referral may be made to the relevant Fair Access Panel for placement.

6. Level 2 processes for placement

Primary school placements under Level 2

- 6.1.** The School Admissions Team will identify a suitable school with reference to the criteria listed in 4.1.
- 6.2.** The School Admissions Team will write to the school or the admission authority for the school to request a place under the FAP Level 2.
- 6.3.** Schools must respond within five school days of a request under the FAP Level 2.

Secondary school placements under Level 2

- 6.4.** Secondary-age children without a mainstream school place who are eligible under Level 2 will be considered by a Fair Access Panel in the relevant area.
- 6.5.** Cases of children attending an APA who do not have a mainstream school place will be considered for placement by the Fair Access Panel when the parent has submitted an application. However, good practice will mean that the Area Inclusion Panel will already be aware of the child and their progress towards being ready for reintegration. A suitable school may have been identified as part of this process, taking into consideration the

factors in 4.1, with transition planned or in progress. This would take place prior to the parent submitting an application to formalise the placement.

- 6.6.** In the case of an urgent requirement for placement, the Local Authority may make a direct request to a school or the admission authority for a school based on the factors in 4.1.
- 6.7.** Schools approached direct must respond within five school days of a request under the FAP Level 2.

7. Fair Access Panels

- 7.1.** A Fair Access Panel will be held for secondary school admissions as and when required under the provisions of the FAP as part of the scheduled Area Inclusion Panel for the relevant area.
- 7.2.** The Fair Access Panel will operate under the Terms of Reference of the Area Inclusion Panel.
- 7.3.** The Panel will include, as a minimum:
 - a Cornwall Council officer acting as the chair person;
 - representatives from relevant schools to be considered for placement; and
 - a representative of the APA where the child attends, if relevant.
- 7.4.** Non-attendance by a representative from a school being considered for placement at a Fair Access Panel does not preclude a decision to place a child at that school and these decisions are still binding.
- 7.5.** School participation at a Fair Access Panel includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full.
- 7.6.** When deciding on a placement the Panel will consider the factors listed in 4.1 of this Protocol.
- 7.7.** Parents/carers will not be invited to attend the Fair Access Panel due to data protection considerations as discussions may need to involve other children.
- 7.8.** The decision of the Fair Access Panel will be binding.

8. Rolling Record

- 8.1.** A 'Rolling Record' will be held by the Local Authority for all placements of children under the FAP Level 2.

- 8.2.** The Rolling Record will have recorded placements of children in each half term in a rolling year. The 'rolling year' is defined as 'across six half-terms' rather than between specific dates.
- 8.3.** Schools may also request that placements of children with challenging behaviour outside the FAP be counted on the Rolling Record and this will be considered by the School Admissions Team and is only likely to be accepted where there is evidence that the child was at risk of permanent exclusion from the previous school. This will include children with an Education, Health and Care Plan or Children in Care who are not considered under the FAP.
- 8.4.** A child will not be counted on the Rolling Record for a particular school if the child is no longer on roll or failed to start at the school, for whatever reason.
- 8.5.** Only placements of children under the FAP will be recorded on the Rolling Record. Schools will be able to provide additional context regarding placements of children with challenging behaviour and their inclusion work, for example via Managed Moves, when they respond to a request for placement or at the Fair Access Panel.

9. School responses

- 9.1.** 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.
- 9.2.** A school would not be expected to refuse on the basis that a child has not had an interim period at an APA if there is evidence that the child is able to access mainstream education.
- 9.3.** Oversubscription cannot be used as a reason for refusing the admission of a child under the FAP.
- 9.4.** No proviso to the placement of a child under the Protocol may be made by any school, such as acceptance only on the basis of a trial period or meeting certain attendance criteria. However, this does not remove the school's right to arrange off-site direction for any child on its roll and does not override any appropriate dual-registration arrangements relating to transition from an APA.
- 9.5.** If approached under 6.6, schools must not refuse solely on the basis that the case has not been to the Fair Access Panel.

10. Provision for permanently excluded children and children not ready for mainstream schooling

- 10.1.** Suitable alternative education provision will be offered by the Education Welfare Service for children living in Cornwall who:

- have been permanently excluded from their most recent school and therefore require a period of support and assessment at an APA; or
- are without a school place and the Local Authority considers that the child is not able to be supported in mainstream education.

10.2. Placement at a mainstream school under the FAP will only take place for children who have been offered or are due to be offered alternative provision under 10.1 when:

- the child is assessed by the APA they are attending as able to be supported in mainstream education and the parent/carers has been advised to submit an in-year application; or
- it is considered by the Local Authority that a child who has been permanently excluded can be supported to attend a new mainstream school without a period of assessment at an APA, for example in the case of a one-off incident.

11. Children unplaced following action under the FAP

11.1. If a child remains unplaced following action under the FAP, the case will be reviewed by a senior officer in Education Effectiveness Cornwall. Steps will be taken to resolve the matter or an alternative school will be identified if there are compelling reasons for refusal, such as significant safeguarding concerns. If an agreement cannot be reached, the Head of Service, Education Effectiveness will decide on an appropriate course of action, including consideration of whether or not the process of direction should be followed, in line with the Code.

12. Review of the FAP

- 12.1.** The effectiveness of the FAP will be monitored by the School Admissions Team and Education Effectiveness Cornwall. The FAP will be reviewed annually in the summer term.
- 12.2.** The Local Authority will consult with schools if changes are proposed following the annual review or at any other time, for example as a result of a review request by schools or a change to the Code.
- 12.3.** Consultation with schools will be carried out via appropriate representative bodies including the Cornwall Education Partnership, Cornwall Association of Primary Headteachers and Cornwall Association of Secondary Headteachers.
- 12.4.** If the majority of schools in Cornwall can no longer support the principles and approach of the FAP, they should initiate a review with the Local Authority. They should do this initially by contacting the School Admissions Manager.
- 12.5.** The existing FAP will remain binding on all schools in the area until a new one is adopted.
- 12.6.** Cornwall Council will report on admissions under the Protocol in its annual report to the Schools Adjudicator.

If you would like this information
in another format please contact:

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