

Proposed Fair Access Protocol

2026

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1. Background to the Fair Access Protocol

The School Admissions Code (2021) requires each local authority to have a Fair Access Protocol. The purpose of the Fair Access Protocol is:

- To ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible.
- To ensure that 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 placed via the Protocol.

The Protocol must be consulted upon and developed in partnership with all schools in the area. Once the Protocol has been agreed by the majority of schools in the area, all admission authorities must participate in it. Participation 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 full¹. Local authorities must provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the Protocol will take place.

The operation of Fair Access Protocols is outside the arrangements for co-ordination and is triggered when an eligible child has not secured a school place under in-year admission procedures.

All admission authorities must participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. All schools must participate in the Fair Access Protocol, whether they are community or controlled schools, grammar, voluntary aided or foundation schools and academies and free schools. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

Fair Access Protocols must also set out how the needs of children who have been permanently excluded, and children for whom mainstream education is not yet possible, will be met.

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.

The School Admissions Code requires that if an in-year admissions application is refused when there are places available in the relevant year group, the governing body of the school must present their case for refusal, demonstrating how the admission of the child would prejudice the provision of efficient education or efficient use of resources.

In the event that the majority of schools in an area can no longer support the principles and approach of their local Fair Access Protocol, they should initiate a review with the local authority. A review should be initiated jointly by the respective Head Teacher forums. 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.

¹ Decisions about admitting children under the Protocol can be made by one individual in an admission authority provided that suitable authority has been delegated to that individual. Admission authorities must ensure this process complies with relevant governance requirements.

2. Principles of the Fair Access Protocol

The Fair Access Protocol will be underpinned by a transparent, collaborative approach, which has the best interests of children at heart, and which seeks to:

- minimise the time that children spend out of education.
- secure appropriate school placements for children.
- ensure that all schools participate fully in the Fair Access process.
- ensure an equitable distribution of children referred for placement under the Fair Access Protocol across all schools.
- ensure that schools are held to account for not complying with decisions under the Protocol to admit children without delay.

We recognise that children being allocated a school place through the Fair Access Protocol may present with challenges. Although there is no duty to comply with parental preference when placing children through the Fair Access Protocol, every effort will be made to allocate a place within a reasonable distance of a child's home to support good attendance and educational achievement. Placement will be considered in single sex and/or faith schools where the child has previously attended a single sex school and the parents continue to wish for single sex education, or where parents can demonstrate that they meet the priority criteria for a school of that faith, as long as this is consistent with an equitable distribution of pupils across all schools.

Children who are involved in a managed move or off-site direction are beyond the scope of the Protocol, as they are not without a school place.

3. Scope of the Fair Access Protocol

In line with the School Admissions Code the Fair Access Protocol includes the following children of compulsory school age (Reception to Year 11) who have difficulty securing a school place through the usual in-year admissions process:

- a) children either subject to a Child in Need Plan or a Child Protection Plan² 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 arrangements³;

² 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).

³ As evidenced by either a child arrangement order not relating to either birth parent or a special guardianship order.

- 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 circumstances⁴;
- 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 place⁵.

A child's eligibility for placement under the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admissions authorities must process these applications in accordance with their usual in-year admission procedures (in line with paragraphs 2.23 – 2.31 of the School Admissions Code). An admission authority must not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol, except where it has good reason to believe that the child may display challenging behaviour, in which circumstances the admission authority may refuse admission and refer the child for placement under the Fair Access Protocol. 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 Fair Access Protocol.

There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parents' views should be taken into account.

The Fair Access Protocol will seek to place a child in a school that is appropriate to particular needs they may have. The Fair Access Protocol must not require a school automatically to admit a child via the Protocol, in place of a child permanently excluded from the school.

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.

4. Operation of the Fair Access Protocol

The Fair Access Protocol applies to children living in Birmingham and/or applying for a place at a Birmingham school who are seeking, but are unable to secure, a school place in year and who meet the Fair Access criteria defined in section 3.

Fair Access referrals must be submitted using the Local Authority's Fair Access referral proforma. This proforma is designed to provide sufficient, relevant information relating to the child in order to support placement by a Fair Access panel. Where the child has been on roll

⁴ 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.

⁵ 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) or asking the Secretary of State to consider a direction (under paragraph 3.29) to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with the admission authority promptly.

at a Birmingham school previously, the previous school is expected to supply the child's attainment data, attendance over the last two school years, and exclusion data and/or any individual behaviour or risk reduction plans. Referrals should, wherever possible, include details of any social care involvement and any relevant family background information, given the significant impact of family background on a child's education.

Where a child is referred for reintegration from City of Birmingham School or Alternative Provision, the referral must also be accompanied by a reintegration plan.

Where the child was previously on roll at a school in another area, the Local Authority will try to obtain the relevant information from the previous school. However, where this is not possible, this must not delay or defer placement decisions in line with the School Admissions Code, paragraph 2.9d, which states that admission authorities must not refuse to admit a child solely because information has not been received from their previous school.

Where a child is newly arrived in the UK, the referring body should try to secure sufficient, relevant information to confirm that the child meets the Fair Access Protocol criteria and to inform appropriate placement. However, schools and panels must not delay admission because information is not available.

4.1 In-year admission arrangements

Under Birmingham's published admissions arrangements, parents/carers of children seeking in-year admission to a Birmingham school are expected to apply directly to schools. Where schools have places available they are expected to admit all applicants for in-year admission.

4.2 Children with challenging behaviour

Where an admission authority does not wish to admit a pupil outside the normal admissions round because it has good reason to believe that the child may display challenging behaviour, it may refuse admission and must refer the child for action under the Fair Access Protocol. A school should only refuse admission under this provision if they have a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools, and if it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

Challenging behaviour is defined in the School Admissions Code as behaviour that would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour, or that 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. Schools will be considered to have a "particularly high proportion of children with challenging behaviour or previously excluded children" if they have a higher percentage of these children across their school than other schools in their network or consortium.

If a governing body refers a child with challenging behaviour for placement through the Fair Access Protocol, under paragraph 3.10 of the School Admissions Code, they must provide information using the Referral Form (Appendix 1) to include:

- details of the child's challenging behaviour;

- evidence that the school has a particularly high proportion of children with challenging behaviour or previously excluded children.

Schools are expected to provide as much as information as possible on the referral form (accessible via the Fair Access section of the Birmingham City Council website).

This information will be reviewed by the Local Authority to ensure that the refusal to admit is in accordance with the School Admissions Code, in particular the definition of “challenging behaviour”; where it is not, the referral to Fair Access will be refused and the school will be required to admit the child as per the School Admissions Code.

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.

Where a school is deemed to have unlawfully refused admission of a child who does not meet the threshold for challenging behaviour, the local authority will intervene via the governing body or admissions authority as appropriate, referring to the Secretary of State if necessary.

4.3 Direct admission of pupils under the Fair Access Protocol

All schools are encouraged to admit children who apply to them directly and meet one or more of the Fair Access criteria where they are able to do so. When a school directly admits a child who meets one or more of the Fair Access criteria, the school should notify the Local Authority immediately via the Schools’ Portal, and specify which of the Fair Access criteria the child has met. The school will then be credited with admitting a child under the Fair Access Protocol and this will be taken into consideration in future Fair Access Panel decisions.

4.4 Non-school Fair Access referrals

The Fair Access Protocol comes into operation when a child fails to gain a place through the usual in-year admissions process, or parents fail to make an application for in-year admission. A range of services may make referrals for placement for children who meet the Fair Access criteria. These include the School Admissions and Fair Access Team, the Youth Offending Team, the Elective Home Education Service, the Gypsy Roma Traveller Team, City of Birmingham School, providers of Alternative Provision, and Birmingham’s Children’s Trust.

Where a parent/carer contacts the Council directly for advice on finding a school place, they should be advised to make in-year admission applications directly to their preferred school(s). When a child fails to gain a place through the usual in-year admissions process and they are identified as meeting the Fair Access criteria, they should be referred directly to the School Admissions and Fair Access team for placement under the Fair Access Protocol.

Fair Access decisions will be made by the appropriate Fair Access Panel. All Fair Access panels will take into consideration:

- fair and equitable distribution of these children across schools, using transparent data to support decision making;
- placing children within a reasonable distance from home to support good attendance, and recognising that children allocated through the Protocol are likely to present with other challenges;
- keeping siblings together wherever possible and appropriate;
- meeting faith needs, wherever possible;

- avoiding multiple placements at one time in one school in one year group wherever possible;
- avoiding multiple placements of Year 11 pupils into one school;
- exceptional circumstances in individual schools that would exempt the school from being considered by the panel for one or more Fair Access placements.

4.5 Schools with exceptional circumstances

All schools must participate fully in the Fair Access Protocol, and all schools are therefore in scope to admit children to be placed under the Fair Access Protocol. However, the Fair Access panels will consider information on exceptional circumstances provided by a school to justify exemption from receiving a fair access placement.

Schools will be offered the opportunity to provide information to Fair Access panels where they feel that there are exceptional circumstances that would mean the admission of a Fair Access child to the year group in question would be of significant detriment to that year group, to the school as a whole, or to the child. This information is to be provided on the School Exceptional Circumstances pro-forma (accessible via the Fair Access section of the Birmingham City Council website) and will only be considered valid for a maximum period of six weeks.

5. Fair Access Panels

All Fair Access referrals will be considered by one of three Local Authority citywide Fair Access panels:

- The Citywide Primary Fair Access Panel (for primary aged children)
- The Citywide Secondary Fair Access Panel (for secondary aged children)
- The Citywide Inclusive Pathways Fair Access Panel

Each panel will meet fortnightly during term time with dates set in advance for the whole school year. Additional panel meetings may be held as required by the volume or urgency of referrals.

5.1 The Citywide Inclusive Pathways Fair Access Panel

Children who meet any of the following Fair Access criteria will be referred to the Citywide Inclusive Pathways Fair Access Panel for placement:

- 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;
- 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.

In addition, in exceptional circumstances the Citywide Inclusive Pathways Fair Access Panel will also consider complex cases that meet other Fair Access criteria.

Children meeting all other criteria will be referred for placement to either the primary or secondary citywide panels.

The Inclusive Pathways Fair Access Panel will be administered and chaired by the Local Authority. The panel will include representatives from the Inclusive Pathways Team and the School Admissions and Fair Access Team, together with representatives of other Birmingham City Council education and children's services teams as appropriate. Secondary and Primary Forum will be consulted regarding additional representatives from schools who will sit permanently on the panel.

Where children are being reintegrated into mainstream school from Alternative Provision and/or the City of Birmingham School, the panel will include representatives from that provider, and from the excluding school.

Children who are being reintegrated back into mainstream school from Alternative Provision and/or the City of Birmingham School will be admitted immediately onto the roll of the allocated school and will not be dual registered.

Where children are placed in an Alternative Provision placement, a mainstream school will be allocated by the panel to give clarity and consistency as to where the child will attend after the Alternative Provision placement has ended.

5.2 The Citywide Primary and Secondary Fair Access Panels

All children not referred to the Citywide Inclusive Pathways Fair Access Panel will be referred to either the Citywide Primary or Secondary Fair Access Panels as appropriate.

The Citywide Primary and Secondary Fair Access Panels will be administered and chaired by the Local Authority and will include representatives from the School Admissions and Fair Access Team, the Inclusive Pathways Team, SENAR and other services as appropriate. Two headteacher representatives from the relevant phase (i.e. primary or secondary) will be invited to attend every meeting to observe and engage in the process and ensure that the agreed Fair Access Protocol is applied in an objective, equitable and fair way.

Both panels will meet fortnightly in term time. Additional panel meetings may be held as required by the volume or urgency of referrals.

5.3 The process for decision making by the Fair Access Panels

For each referral, the Local Authority will compile centrally-held information into a scoring matrix to inform and support the panel to make decisions. Fair access decisions will be based in the first instance on ensuring all schools take a fair share of pupils; the number admitted through Fair Access over the past two terms plus the current term (the "accounting period") will count as the most significant factor when building up a scoring matrix for allocation.

The scoring matrix for each child will include the six nearest suitable schools to the child's home address. Scoring matrices will include the following data:

- The Published Admission Number (PAN) for the relevant year group;
- The Number on Roll (NOR) for the relevant year group;
- The distance of the school from the child's home address in metres;
- The school's Ofsted rating*;
- The number of children admitted to the school under the Fair Access Protocol during the accounting period (the current term plus the previous two terms);
- Additional information including whether the child has siblings at the school or pending placement under the Fair Access Protocol, and the number of Year 11 pupils admitted to a secondary school under the Fair Access protocol during the current school year.

*Ofsted Rating:

From September 2024, Ofsted no longer makes an overall effectiveness judgement in inspections of state-funded schools, and from the 2025-2026 academic year Ofsted have changed the way they judge and report. As there is currently a mix of potential grades they will be compared as follows:

- For schools inspected before September 2024 the overall effectiveness judgement will be used;
- For schools inspected after this date with graded judgements but no overall effectiveness judgement, the Behaviour and Attitudes judgement will be used;
- For schools inspected under the latest framework, the Attendance and Behaviour judgement will be used, with the new judgements comparing to the old ones as follows:
 - Urgent Improvement = Inadequate;
 - Needs Attention = Requires Improvement;
 - Expected Standard and Strong Standard = Good;
 - Exceptional = Outstanding

The scoring matrix will be the primary factor used by the Citywide Primary and Secondary Fair Access Panels when deciding where to place children.

The Citywide Inclusive Pathways Panel will make reference to the scoring matrix, but will primarily take into account the number of children admitted to each school under the Fair Access Protocol following placement by the Citywide Inclusive Pathways Panel as well as children admitted directly by schools under criteria c, d, and j, in order to recognise the increased complexity of children placed by that panel. It is also expected that the Citywide Inclusive Pathways Panel will frequently need to consider wider contextual factors due to the more complex nature of the children referred to the panel for placement under the Fair Access Protocol.

Where schools in particular areas are experiencing higher demand for in-year Fair Access placements, the scoring matrix may extend beyond the six schools closest to the child's home address in order to ensure fairness and equity of placements.

Details of the referral will be sent to each of the schools that are in scope to admit a child in advance of the panel meeting. If any of these schools believes that the admission of the child would prejudice the efficient provision of education or use of resources, they will be invited to submit details of these exceptional circumstances to the School Admissions and Fair Access team using the Exceptional Circumstances Submission Form (accessible via the Fair Access section of the Birmingham City Council website). Schools who wish to offer a place directly to the child at this stage should notify the School Admissions and Fair Access team.

Decisions on each case must be made at the relevant panel meeting. Decisions will be binding on all parties and schools will be accountable for complying with the decisions of the panels, meeting with parent/carers at the first appropriate admission meeting. Arrangements should be made for the child to start at the school as soon as possible.

5.4 Pupils who have been on roll at a Birmingham school within 12 months of the date of referral for placement under the Fair Access Protocol

Children who were previously on roll at a Birmingham school, and who are referred for placement under the Fair Access Protocol within 12 months of the date on which they were removed from the school, will be placed at their previous school by the relevant Fair Access panel other than in the following circumstances:

- The child has moved to an address that is beyond a reasonable distance of their previous school;
- There are exceptional circumstances where it would not be appropriate for the child to return to their previous school, for example where a child would be at risk of serious harm or would place other children/adults at risk of serious harm that could not be managed safely were they to return to their previous school.

5.5 Selective schools

Designated grammar schools are permitted to select their entire intake on the basis of high academic ability. They do not have to fill all their places if applicants have not reached the required standard. A grammar school, or a school which selects wholly by aptitude, may be considered as a potential Fair Access Protocol placement for a child, if it is one of the closest 6 schools to the home address and:

- the child has achieved a satisfactory score in the school's test, which should take place in accordance with the school's published admission arrangements and be arranged in time for a decision on allocation to be taken within the statutory timescale; OR
- the child's previous school was a selective grammar school or had admitted that pupil based on an aptitude test which qualified the pupil for priority for admission under the previous school's admission arrangements, meaning that a test may not be required; OR
- there is other evidence from the child's previous school that the child's levels of attainment, or relevant aptitude, indicates that they have an ability/aptitude level that is consistent with the relevant cohort in a selective school, meaning that a test may not be required.

The decision on whether or not a selective test is required rests with the school being considered for placement, but any test must be arranged so that the result is available and a placement decision can be made within the 20 school day deadline.

6. Recording and reporting outcomes

Decisions on every Fair Access case will be made at each meeting and will be regularly reported to the Education Board (see Section 8).

The Local Authority will record each placement decision made at every Fair Access Panel meeting and will communicate the decisions to parents and to schools.

The Local Authority will also provide termly statistics on placements by all panels and schools.

In the event that a school fails to adhere to a panel decision this will be referred to the admissions authority, and may be escalated to the Office of the Schools Adjudicator or Secretary of State as appropriate.

Parents whose children are referred for placement under the Fair Access Protocol retain the right to apply for places through the usual in-year admissions process, and to appeal for school places of preference where they have applied in-year to a school and not been successful in securing a place. Admissions to schools determined under the Fair Access Protocol should not be delayed in the event that a parent or carer decides to pursue an appeal for a different preferred school. The information considered by the Fair Access panel may be used to support school statements for an appeal hearing.

7. Monitoring

The attendance of all children placed by the three Fair Access panels at their new schools will be monitored by the Local Authority.

8. Governance

Two headteacher representatives from the relevant phase will be invited to attend each meeting of each citywide panel on a rota basis in order to observe the operation of the panel, and to contribute to the decision-making process. Secondary and Primary Forum will be consulted regarding additional representatives from schools who will sit permanently on the Citywide Inclusive Pathways panel.

The operation of Birmingham's Fair Access Protocol will be overseen by the Education Board who will receive regular reports from the Fair Access team. The board will receive quantitative information including the number of cases considered under each Fair Access category, the number of children placed, and the length of time between referral and placement. The board will also review processes including the design of the scoring matrix as part of a cycle of continuous improvement.