



## Primary Fair Access Protocol 2022/23

### Background

- 1.1. The School Admissions Code (2021) <sup>1</sup>sets out the mandatory requirements of the admissions process. The Code is clear that all local authorities and admissions authorities are required to have a Fair Access Protocol and that all schools and academies must participate in their local authority's protocol in order to ensure that all children and young people, especially those that are deemed as 'vulnerable or hard to place' are offered a place at a suitable school as quickly as possible. This includes admitting children above published admission number to schools that are already full.
- 1.2. The School Admissions Code 2021 also makes it clear that local authorities must ensure that no school –including those with places available- is asked to take a disproportionate number of children and young people who have been excluded from other schools, or who have challenging behaviour, under the Fair Access Protocol.
- 1.3. This protocol has been devised in accordance with relevant provisions of the School Admissions Code (2021).

### 2. Aims of the Protocol

- 2.1. This protocol is designed to:
  - a. to support the members of the Fair Access Panel to take a child and family centered approach when placing children in accordance with the protocol;
  - b. ensure that all schools within Walsall admit children and young people, including those who are deemed as 'unplaced and vulnerable and those who are having difficulty securing a school place' on a fair and transparent basis in accordance with the requirements of the School Admissions Code (2021);
  - c. acknowledge the need for vulnerable young people who are seeking a school place to be dealt with quickly and empathetically;
  - d. to be fair and transparent, and have the confidence of all schools in Walsall;
  - e. ensure that all Walsall schools and academies admit a fair and equitable share of pupils under the protocol whilst taking account of the geographical and logistical constraints of the Borough.

### 3.0. Main Principles of Walsall's Fair Access Protocol

- 3.1 This protocol will apply to all mainstream primary schools and academies in Walsall.
- 3.2 The protocol should not be used to circumvent the mid-year admissions process.

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<sup>1</sup> Schools Admissions Code, May 2021, [www.gov.uk](http://www.gov.uk)



- 3.3 Schools will exceed their published admission number where necessary in order to admit pupils under the protocol.
- 3.4 Pupils identified for placement under the Fair Access Protocol will be given priority over those on waiting lists for the same school;
- 3.5. Whilst acknowledging that there is no requirement to comply with parental preference when placing a child under the Fair Access Protocol the Panel will recognise that parental preference is an indicator of potential placement sustainability and will try to take this into account wherever possible.
- 3.6. The panel will endeavour to take a child and family centred approach when identifying a school placement and wherever possible will allocate the child a place in the locality area in which the child lives whilst also taking account of the statutory home to school walking distances for primary school aged children as follows: <sup>2</sup>
- 2 miles for children up to the aged of eight
  - 3 miles for children over the age of eight
- 3.7. The allocation of pupils should be equitable, with no one school or Academy being required to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour;
- 3.8. Placement of a child with challenging behaviour must not be unduly delayed due to a lack of SEN assessment data as per paragraph 3.13 of the School Admissions Code (2021) below.
- “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.”

#### **4.0. Primary Phase Mid-Year Admissions**

- 4.1. The majority of pupils should be admitted to Walsall Schools via the Primary Mid-Year Admissions Process. This process is co-ordinated by the Local Authority’s Admissions and Appeals team and all Schools and Academies must act in accordance with the Walsall’s Primary Mid-Year Admissions Procedure.

#### **5. Criteria to be used to identify pupils to be placed under the Fair Access Protocol**

- 5.1. The Fair Access Protocol does not apply to looked after children, or children with an Education, Health and Care Plan (EHCP) as these children must be admitted in accordance with relevant schools admissions and placement process as set out below.

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<sup>2</sup> [Department for Education \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)



- 5.2. Children who are looked after must be admitted in accordance with Walsall's admissions process for looked after children. . **Any consideration of a school move for a looked after child must be preceded by a Personal Education Plan (PEP) review**
- 5.3. **Children who have an Education Health and Care Plan must be admitted in accordance with the ECHCP process and any consideration of a school move for a child with an EHCP plan must be preceded by EHCP review.**
- 5.4. In order to facilitate this the swift and efficient placement of children via the Primary Fair Access Protocol the following data will be made available to the panel at each meeting:
- The number of children that have been admitted to each primary school under the Fair Access Protocol per year group. The Local Authority is working to develop a new FAP credit sheet which will enable the FAP Panel and each relevant school to see the names of all children that have been placed at that school including date of allocation and date of admission of all children who have been placed at a particular school. The FAP credit sheet will be updated each at each FAP meeting and will be adjusted to take account of pupils that were previously allocated via FAP but are no longer on roll at a particular school.
  - The FAP credit sheet will also highlight the number children who have been admitted to each school that have been previously excluded or are deemed to have a history of challenging behavior as set out in paragraph 5.5 j. below.
  - The FAP credit sheet will also highlight the number of children that have been admitted to schools under each of the FAP criteria. This is to enable the panel to begin to develop a graduated approach to making FAP allocations. For instance if a child has placed at a school via FAP because they were unable to secure a place via the mid-year process due of lack of place availability then the potential impact on the pupil and the school is different to a situation where a child has been placed at school under the 'challenging behavior' criteria.

Note: this will be an area that the newly constituted FAP panel will continue to develop during the forthcoming academic year and will explore possibility of tying in with the banding as provided in the SEN guidance document. PNS will be provided with regular updates as appropriate.

- The FAP credit sheet will start afresh each academic year but numbers of children allocated to each school from previous academic years will be available as a further tool to assist the panel with decision making.
- Latest vacancy information and numbers on roll for each school per year group will also be provided to the Primary FAP Panel at each meeting. It is intended that this information will serve two purposes:



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- To re-assure FAP panel members that there is no scope for the children to be placed via the mid-year admissions process
- To support the Primary FAP panel with decision as the panel may decide to pro-rata FAP allocations in relation to the size of the school i.e. schools that 2+ forms of entry may be expected to admit more FAP children.

5.5. Please note that the revised School Admissions Code 2021 does not permit the inclusion of any locally agreed FAP criteria as was previously the case. Given this the Walsall Primary Fair Access Protocol 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.<sup>3</sup>

- a). children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b). children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c). children from the criminal justice system;
- d). children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e). children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;

Whilst this criterion is a mandatory requirement of the Fair Access Protocol referrals should only be made under this criterion in the event that a child has difficulty securing a school place.

Admissions Authorities are required to note paragraph 1.27 of the SEN and Disability Code of Practice as follows:

The School Admissions Code of Practice requires children and young people with SEN to be treated fairly. Admissions authorities:

- **must** consider applications from parents of children who have SEN but do not have an EHC plan on the basis of the school's published admissions criteria as part of normal admissions procedures
- **must not** refuse to admit a child who has SEN but does not have an EHC plan because they do not feel able to cater for those needs
- **must not** refuse to admit a child on the grounds that they do not have an EHC plan.

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<sup>3</sup> The School Admissions Code 2021 gives an example of reasonable measures as follows, where an application has been made to at least one school and this has been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.



- 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.

PNS have concluded that it is not possible to agree a definitive threshold in respect of this criterion. However, they have identified the following as indicators that a child has a history of 'challenging behaviour' and is eligible for placement via this protocol in accordance with this criterion:

- Comprehensive behaviour log evidencing a pattern of persistent disruptive behaviour and/or fixed term exclusions over a consistent period of time.
- The child has been subject to one of more managed moves
- The child has been attending alternative provision or there is evidence to indicate that the previous/existing school was/is in the process of exploring options for alternative provision.
- child has been permanently excluded.

Please note that 3.11. of the School Admissions Code advises that admission authorities should only rely on the provision in paragraph 3.10 in relation to children with 'challenging behaviour' 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. In seeking to refuse admission under this criterion then a Head Teacher or Principal must be able to evidence this.

PNS recognises that the term 'challenging behaviour' is the specific term that is used in the School Admissions Code (2021) and as such cannot be changed. PNS also recognises that there is a requirement for the set of indicators as set out above to ensure some consistency about how schools and admissions authorities in Walsall interpret and apply paragraphs 3.10 and 3.11 of the School Admissions Code (2021).

However, PNS have requested that the following paragraph from Walsall's Restorative Practice, Relationships and Behaviour Guidance Document is also included in order to set out the wider context that it believes that all schools should be taking account of when considering whether or not to refuse to admit a child on the grounds of 'challenging behaviour'

## PRINCIPLES TO GUIDE PRACTICE



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- Every child is unique
- All behaviour is communication
- Behaviour is a function of the interaction between a person and their physical and social environment
- Through their behaviour, children are trying to solve a problem not be one
- Children develop their social and emotional skills and ability to self-regulate in the context of secure relationships
- Children need their basic needs met, including physical and emotional safety, before they are ready to learn
- All children are different and a 'one size fits all approach' is not likely to be effective
- A child 'at risk of exclusion' is a child with unmet need.

Prior to making a decision to refuse to admit a child on the grounds of 'challenging behaviour' PNS would like schools to find out what has been done to support this child in the past and ask whether they believe that all options have been fully explored.

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

## **6. The Fair Access Panel**

6.1 The remit of the Fair Access Panel is to decide on an appropriate placement for each child taking account of the issues that will impact on the sustainability of the placement and also the responsibilities of parents and guardians to ensure that their child is in receipt of a suitable education.

6.2. The Fair Access Panel aims to be representative of all Walsall Primary Schools, including primary maintained schools and academies, and will comprise of three representatives from each locality area and include representation both primary maintained schools and academies in Walsall.

6.3. All primary head teachers and principals of primary schools and academies in Walsall will be eligible to be members of the Fair Access Protocol Panel. The effectiveness of the panel is contingent on the engagement of all schools in Walsall and the attendance and active participation of all panel members.

6.3. In the event that a school or academy does not engage with the Fair Access Process then the Chair of Primary FAP will contact the relevant Head Teacher or Principal to attempt to resolve the matter. In the event of persistent non-engagement then the matter will be escalated to the Local Authority who will contact the Head Teacher/Principal and if necessary escalate



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further to the relevant Trust and/or the Department for Education and/or Regional Schools Commissioner.

- 6.3. Primary FAP Panel members will be appointed by PNS and the panel members will appoint a Chair and Vice-Chair. The Chair and Vice-Chair are pivotal to the success of the panel. The responsibilities of these roles will include overseeing the quality of the referral information, liaising with the School Admissions and Appeals Team, negotiating with Head Teachers and acting as a mediator, where required, in order to ensure that the decisions of the Panel are implemented in an effective and timely manner.
- 6.4. The Chair will be only be expected to assume the responsibility for a single academic year only and the Vice-Chair will assume the role of Chair for the following academic year. Panel members will be appointed by PNS at end of each academic year.
- 6.5. The following Local Authority representatives will be required to attend ALL Fair Access Panel meetings. In the event that the designated representative cannot attend then another appropriately briefed representative MUST attend in their absence:
  - Child Safeguarding Coordinator
  - Admissions and Education Sufficiency Manager
  - School Admissions Inclusions coordinator
  - Representative from the SEND Team
  - Representative from the Elective Home Education Team
  - Admissions Panels Coordinator
- 6.6. Representatives from other Local Authority services can be invited to attend Fair Access Panel meetings as appropriate;
- 6.7. The Fair Access Panel will meet regularly on a four weekly meeting cycle (20 school days) during term time only. This is to ensure that the panel are able to allocate places for children who are identified as being eligible for placement under the Fair Access Panel in accordance with the 20 day deadline as set out in the School Admissions Code 2021. The meeting schedule for the next academic year will be agreed in advance of each new academic year. The Panel or the Local Authority may identify the need for additional meetings but these will not take place without the consent of the Chair and the presence of either the Chair/Vice-Chair.
- 6.8. Placement decisions will be made by majority view of the Head Teacher representatives that are in attendance at the relevant meeting. In the event of a disagreement about a placement decision then the Chair of Panel will make the final decision.
- 6.9. Local Authority Officers may make recommendations to the panel regarding placement decisions but individual officers do not have voting rights.

## **7. Procedures**



- 7.1 Parents of children referred for placement under the Fair Access Protocol will not be invited to attend Fair Access Panel meetings. Parents must be informed about the Fair Access referral process and asked about their preference for a school place for their child. However, parents will be advised that Fair Access Panel do not have to place a child in accordance with parental preference.
- 7.2 Referrals will be submitted to the School Admissions and Appeals Team a minimum of five school days prior to the meeting.
- 7.3 Meetings will be held on Wednesday mornings between 9.30 and 11.30 during term time only. Pre-meetings for the Chair and Vice-Chair will be diarised for the Friday prior to each meeting. Subject to the Chair's approval, all referrals paperwork will then be circulated to all panel members by 12.00 noon on the Monday prior to each Panel meeting.
- 7.4 In preparation for each panel meeting, the School Admissions and Appeals Team will collate the following in relation to each child that has been referred to FAP:
- all **available** safeguarding information, subject to appropriate consent
  - all **available** attainment/attendance/behaviour data, subject to appropriate consent. Behaviour data can include information about exclusions and behavior log,

The LA will also measure the distance from the child's home address to all schools within a reasonable distance.

The School Admissions and Appeals team will do all it can reasonably be expected to obtain this information, including contacting previous schools, other Local Authorities and agencies where appropriate and will provide evidence of this to the FAP panel.

However, in accordance with provisions of the School Admissions Code 2021 the Panel FAP cannot delay or defer making a decision about a placement solely because additional information is not available.

- 7.5 Please note that when a school makes a referral into the FAP panel on the grounds that they cannot admit the child as a result of 'challenging behaviour', then the referring school must also provide details of all relevant safeguarding, attainment and behavioural information in setting out the reasons for the referral.

In order to underpin the successful implementation of the Primary Fair Access Panel an information sharing agreement will be devised and implemented by the Local Authority. This is to ensure that the FAP information sharing process is robust, transparent and compliant with the provisions of the following:

- Keeping Children Safe in Education (September 2020)
- Generation Data Protection Regulation (2018)
- School Admissions Code (2021)
- SEND Code of Practice (2015)





- 7.6. In each case the panel will review the referral and decide upon the most appropriate **placement to meet the child's needs**. In reaching a decision the panel will consider the circumstances of the pupil and the context of the school, taking account of the following factors:
- the distance and ease of travel from home to school;
  - the fairness of any placement and proportion of hard to place pupils in each school in the child's locality area as evidenced by the information presented to each placement panel
  - the parents or carers preferred choice(s) of school and reasons for this.
  - genuine concerns from the local authority or referring school about admission.
  - other reasonable considerations.
- 7.7. The panel will aim to place children on a locality basis whilst recognising that this might not always be possible given the demographic and geographic constraints of the borough.
- 7.8. The Local Authority will circulate the updated FAP credit sheet of pupils placed and the minutes of meetings to all member of the Primary Fair Access Panel within two school days of each Fair Access Panel meeting. The Local Authority will also email all relevant schools confirming any decisions that were taken in relation to their school within three school days of the date of the meeting.
- 7.9. The Local Authority will write to parents and carers informing them of the panel's decision within three school days of the meeting.
- 7.10. Receiving schools should arrange to admit children placed with them as soon as possible and within a maximum of ten school days of the date of receipt of the letter from the Fair Access Panel meeting. All FAP decision letters will be sent by the Local Authority to parents/carers and schools via email. The letters to the schools will be addressed for the attention of the Head Teacher.
- 7.11. For the purposes of this protocol, a child is deemed to be a pupil at the school from the expected first date of attendance and must be listed in both the admissions and the attendance register within a maximum of ten school days of the school receiving the letter confirming the FAP placement. The only exception to this will be if a relevant school refuses to admit the student. In these circumstances please refer to the process outlined below in section 8.0 below.

Receiving schools should inform the Local Authority's CME team once the child has gone on roll at the school so that the child can be closed to the Fair Access Panel and also to the Local Authority's Children Missing Education list.

## **8.0. Difficulties or Delays in Securing Admission.**



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- 8.1. It is expected that all parties will act with a sense of urgency to ensure that a child is placed under the Fair Access Protocol. All schools are expected to respond to requests to admit within seven calendar days. Any difficulties or delays in securing Admission will be brought to the attention of the FAP Chair as a matter of urgency. The LA will attempt to resolve the situation via dialogue between the FAP Chair, the respective school and parents/carers if appropriate.
- 8.2. In the event that the matter cannot be resolved at this stage then a representative from the respective school or trust will be required to attend a specially convened meeting of the FAP panel in order to set out their reasons for refusal. If required, the LA will also write to the Chair of the Governing Body and where appropriate, the Chair of the Trust, to advise that the school is being required to attend the FAP panel meeting. The FAP panel will need to take a decision as to whether to accept the school's case and agree to place the student at another school or whether to escalate the matter to the Assistant Director of Access and Achievement for a decision about the most appropriate course of action.
- 8.3. Options will include a 'Direction to Admit' in the case of maintained schools or referral to the Secretary of State in the case of Academies. If an Academy has not agreed a start date for a child within 15 calendar days then Local Authority can apply for a Direction to the Secretary of State. The Local Authority will make a decision about the course of action to be followed within two school days of the FAP panel meeting. Appendix C sets out the 'Rules Governing Direction'.
- 8.3. Any decisions will be actioned by the Local Authority as matter of urgency so as to minimise any further disruption to the respective child's education.

## 9.0 Consultation and Review of Walsall's Primary Fair Access Protocol

- 9.1. In accordance the School Admissions Code (2021) s.3.22 and with Fair Access Protocols<sup>4</sup> (Guidance for school leaders, admission authorities and local authorities (August 2021) the Local Authority **must** consult and develop its Fair Access Protocols in partnership with ALL schools its area. The Local Authority is also required to keep its Fair Access protocols under review to ensure it remains fit for purpose and ensure that all schools are consulted on any changes. In response to this requirement, Walsall Local Authority will ensure that the Primary Fair Access Protocol is reviewed on annual basis in preparation for each new academic year.
- 9.2. In the event that the majority of schools can no longer support the principles and approach of the local FAP (for example, if they believe it is not operating fairly or effectively), they may request that it is reviewed. The mechanism for invoking a review and the procedure that follows should be agreed during the development of each FAP. The existing FAP will remain binding on all schools in the area until a new one is adopted.

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<sup>4</sup> School Admissions Code 2021

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1001050/School\\_admissions\\_code\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf)

Fair Access Protocol 2021 (Guidance)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1012993/FAP\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1012993/FAP_Guidance.pdf)



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- 9.3. Any request to review Walsall's Primary or Secondary Fair Access Protocol should be made to the Local Authority via the relevant Head Teacher Association. PNS in the case of the Primary Fair Access Protocol and WASH in the case of the Secondary Fair Access Protocol. The Local Authority will then work with the relevant Head Teacher Association to agree the terms and timescale for any review. However, queries or concerns about Walsall's Primary or Secondary Fair Protocols can be raised with Walsall Local Authority at any time by emailing [childrenmissingeducation@walsall.gov.uk](mailto:childrenmissingeducation@walsall.gov.uk)

## **Appendix: Rules Governing Direction**

In accordance with the provision of the School Admissions Code 2014<sup>5</sup> (3.16 -3.18 and 3.22) Local Authorities have the power to direct the governing bodies of maintained school to admit a child **even** when their school is full and in the case of Academies to refer the matter to the Secretary of State.

### ***Local Authority Powers of Direction (general)***

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<sup>5</sup> School Admissions Code 2014,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389388/School\\_Admissions\\_Code\\_2014\\_-\\_19\\_Dec.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School_Admissions_Code_2014_-_19_Dec.pdf)



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*A local authority has the power to direct the governing body of a maintained school for which they are not the admission authority to admit a child in their area even when the school is full. The local authority can only make such a direction in respect of a child in the local authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The local authority must choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded. It must not choose a sixth-form that selects by ability unless the child meets the selection requirements, or a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources.*

*Before deciding to give a direction, the local authority must consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. If, following consultation, the local authority decides to direct, it must inform the governing body and head teacher of the school. The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body must tell the local authority. The local authority must not make a direction until the 15 days have passed and the case has not been referred.*

*If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school must admit the child. The Adjudicator's decision is binding. The Adjudicator must not direct a school to admit a child if this would require the school to take measures to avoid breaking the rules on infant class sizes and those measures would prejudice the provision of efficient education or the efficient use of resources.*

## **Secretary of State's Power of Direction (Academies)**

*Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary*

*of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child, and can seek advice from the Adjudicator in reaching a decision.*