



Fair Access Protocol

2024/25

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Part one

Statutory framework

1. This version of Norfolk's Fair Access Protocol is effective from 19 August 2024 until further revision. Any revision to the Protocol will be consulted upon with all schools through an MI Sheet issued by the local authority. Any changes must be agreed upon by a majority of schools which according to the "Fair Access Protocols: Guidance for school leaders, admission authorities and local authorities " is that the view of more than half of the total number of schools in the area should be regarded as the majority.
2. The School Admissions Code was revised in 2021 and the revised Code came into force on 1 September 2021. Paragraph 3.14 of the revised Code sets out the statutory requirement for all local authorities to have a Fair Access Protocol " 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".
3. The School Admissions Code 2021 applies to admissions to all maintained schools in England and should be read alongside the School Admission Appeals Code 2022 and other guidance and law that affect admissions and admission appeals in England. Academies (including free schools), university technical colleges and studio schools are required by their funding agreements to comply with the School Admissions Code 2021 and the law relating to admissions, though the Secretary of State has the power to vary this requirement where there is demonstrable need.
4. It is a statutory duty under paragraph 3.15 of the Code that all admission authorities must participate in the Fair Access and it states that "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 full".
5. The admission authority for community and voluntary controlled schools is the local authority, for foundation and voluntary aided schools it is the governing body and for academies (including free schools) it is the academy trust although the trust can delegate this responsibility to the governing body.
6. Paragraph 3.13 states that 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 assessed for special education needs.
7. There is no duty for local authorities or admission authorities to comply with parental preferences when allocating places through the Fair Access Protocol in line with paragraph 3.19 of the Code but parents' views should be taken into account.
8. Paragraph 3.10 of the Code states that "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." The local authority will only take action to allocate a school place under the Fair Access Protocol where the refusal is in respect of a child who is CME at the time of the refusal.

- 9.** Paragraph 3.11 states that “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”.
- 10.** Challenging behaviour is defined in the Code as “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. 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”.
- 11.** 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
 - safeguarding concerns.
- 12.** Paragraph 3.12 states that “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”.
- 13.** Paragraph 3.18 states that “eligibility for the Fair Access Protocol 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 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”. It is the duty of the admission authority for the school to respond to any appeal request and comply with the provisions of the School Admission Appeals Code 2022.
- 14.** Paragraph 3.21 states that “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”.
- 15.** Paragraph 3.22 states that “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. There should be a clear process for how such a review can be initiated within each Fair Access Protocol. 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”.

16. When it is necessary to revise the Protocol due to the issue is new or revised statutory guidance the Fair Access Manager will consult with all school through the E Courier and the Fair Access Panels. As it is necessary for a majority of schools to agree to the Protocol, a non-response to such communication will be taken and recorded as acceptance of the revised Protocol.
17. The Protocol is also subject to the requirements of the Equality Act 2010, Human Rights Act 1998 and the School Standards and Framework Act 1998 as set out in Appendix 1 of the School Admissions Code.
18. This Protocol also takes account of Department for Education’s “Fair Access Protocols: Guidance for school leaders, admission authorities and local authorities ” departmental advice issued in August 2021 and “Working Together to Improve School Attendance” guidance issued in February 2024 and which comes into force on 19 August 2024

Scope of the fair access protocol

19. Fair Access Protocols 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:
 - a. children either subject to a Child in Need (CIN) Plan or a Child Protection (CP) 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 (EHCP)), 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; and
 - m. previously looked after children for whom the local authority has been unable to promptly secure a school place.

- 20.** Examples of children who the local authority considers fall into the categories above and therefore will refer to Norfolk's Fair Access Panels include:
- a. children who are Children Missing Education for over 15 school days;
 - b. children who move into the catchment area of a school which is full and their current school is over the statutory distance for school transport (2 miles for children up to the age of 8 and 3 miles for those who are 8 or over) or the next nearest school with spaces available is over the statutory distance for transport;
 - c. children who have been withdrawn from school to home educate for whatever reason and home education has been disallowed or the parent no longer wishes to continue;
 - d. children without a school place and with a history of persistent absence including those for whom a School Attendance Order is required to secure attendance;
 - e. children in Year 11 who move into Norfolk at or after the start of the Easter school holidays and who do have access to a school within a reasonable distance.
- 21.** The Fair Access protocol applies only to Norfolk schools and therefore none of the provisions can be applied to schools in any other local authority area.
- 22.** Looked after children or children with a statement of special educational needs or Education, Health and Care Plan do not fall within the remit of the Fair Access Protocol as they must be admitted in line with paragraph 3.12 of the School Admissions Code.

Fair access protocol – principles

- 23.** Norfolk's Fair Access Protocol operates when the in-year admissions process has failed to secure a school place for a Norfolk pupil or when a governing body refers an application back to the local authority for further consideration in line with paragraph 8.
- 24.** The protocol ensures that children are offered a place at a suitable school as quickly as possible.
- 25.** The protocol ensures an equitable distribution of pupils between local schools.
- 26.** The aim of the protocol is to ensure that a school is identified and required to admit any child not already on a local school roll.
- 27.** A school cannot refuse a fair access placement on the basis that the class/es is/are already full or over-subscribed.
- 28.** No primary phase school will be expected to admit more than 32 children to a class as a result of a Fair Access request.
- 29.** Where necessary the Local Authority will be responsible for the provision of home to school transport to cover the normal school day to support a Fair Access placement where the allocated school is over the statutory distance for the provision of transport. Any transport will be provided for the total period that the pupil is in attendance at the allocated school.
- 30.** Any child that has been removed to home educate shall in the first instance be offered a place back at the last Norfolk school attended if no other parental

preference expressed or the Admissions Team have failed to identify a school place. However, it is recognised that a placement at the original school may not be appropriate in all cases such as where for example the home school relationship has broken down and therefore in exceptional circumstances this will not apply. Any exception to this principle must be discussed with and agreed by the Fair Access Manager and can be referred to the appropriate Fair Access Panel for agreement.

Fair access protocol – process

- 31.** The in-year application form includes a request for additional information to be used if the application needs to be considered under the Fair Access Protocol.
- 32.** All admission requests from pupils who are already on roll at an alternative local school are considered as part of in-year admission arrangements and a placement under the Fair Access Protocol cannot be considered.
- 33.** Any parent of a pupil who is refused one of their preferences is offered their statutory right of appeal even where a place has been offered at an alternative school through the Fair Access Protocol.
- 34.** School admission appeal panels are independent of the Local Authority and therefore are not obliged to take account of Fair Access placements when making a decision on an appeal. Panels are however required by paragraph 3.12 of the School Appeals Code to take account of the impact of the operation of the Fair Access Protocol when making its decision on prejudice at Stage One of any appeal.
- 35.** Schools should be aware that where they refuse a child a school place and subsequently refer them to the FAP, they may later be required to admit that child if an appeal is upheld. This would still be the case when an alternative school place is offered to the child via the FAP. In all circumstances, the decision of an appeal panel is binding and must be complied with. The fact that an appeal has been lodged for a child is not a reason to delay the FAP process.
- 36.** Where a Fair Access request will have the effect of breaching the infant class limit of 30 (applicable to Reception, Year One and Two classes) the Local Authority will grant an exception in line with paragraph 2.15 (e) of the School Admissions Code when the following apply:
 - a. where there is no alternative local school with places in the appropriate year group/class group. “Local” will be considered as either a school within the statutory walking distance, (2 miles for under 8’s and 3 miles for those over 8 years of age) or in other cases where there is existing school transport with spare seat(s) in place to an alternative school and in the same secondary school catchment area whenever possible.
 - b. no classes will be required to exceed 32 as a result of Infant Class exception decisions.
- 37.** In line with Department for Education guidance all schools, including academies, are expected to respond to requests by local authorities to admit a child under the Fair Access Protocol within seven calendar days.

38. Paragraph 208 of the “Working Together to Improve School Attendance” guidance states that “an offer of a place is not an agreement. Before a pupil can be registered at a school the parent (or prospective pupil) must have accepted the offer, either by agreeing the starting day in advance or the pupil attending the school on that day.” Therefore, a school should not place a pupil on roll until notified by the parent that they have accepted the place and agreed a start date.
39. Once the place has been offered it is lawful to hold a pre-admission meeting to discuss transition into school. A school cannot withdraw an offer as a result of an admission meeting, but a parent could refuse the place. In that case the school should notify the Fair Access & Exclusions Team that the place has not been accepted by the parent.
40. Where a parent does not accept an allocated place or fails to respond to the allocation letter within 5 school days the CME Team will contact the parent to advise that the allocated school is the only offer that the local authority will make and that the parent can appeal for any school refused through the in-year application process. The parent will also be advised that if they do not appeal or take up the place allocated the local authority will proceed with a School Attendance Order.
41. Where a place has been allocated through a Fair Access schools are expected to cooperate with the School Attendance Order process to enforce school attendance if required. Any SAO that needs to issued following an allocation at a Fair Access Panel will be referred to the next Fair Access Panel for confirmation.
42. At primary level correspondence from the Fair Access and Exclusions Team requiring the school to admit under the Fair Access Protocol or the allocation letter sent where a virtual Fair Access Panel is held will act as the formal consultation for a School Attendance Order. Where an SAO is required
43. The Attendance Team will notify the Fair Access and Exclusions Team of all School Attendance Orders issued. The Fair Access and Exclusions Team add this information to the allocation numbers held for each Panel and circulated with the Agenda and Minutes of each meeting.

Refusal on the grounds of challenging behaviour

44. Any school that wishes to refuse an application in line with paragraph 3.11 of the Code as described in paragraph 8 must provide written evidence of:
 - a. the challenging behaviour of the applicant demonstrating that it fulfills the definition set out in paragraph 9; and
 - b. the particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools when notifying the local authority of the decision.

This information will be considered by the Fair Access Manager and Inclusion Adviser to determine if the refusal was reasonable and compliant with the Code. No refusal on these grounds can be accepted unless information to support both the of the requirements of the Code is provided. If the local authority does not find that the

threshold as set out in the Code is met the school will be required to offer a place.

45. The local authority will consider that a child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act. Admission authorities should also consider the effect of the decision of the Upper Tribunal in *C & C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party)* (SEN) [2018] UKUT 269 (AAC) about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physically abuse of other persons as a consequence of a disability.
46. Any child refused admission on the basis of challenging behaviour will have the right to appeal against that decision to the Independent Appeal Panel and appeal panels will expect both requirements of the Code to be proved at Stage One of the appeal.

Fair access protocols – enforcement

47. Whilst it is hoped that all schools will recognise their statutory duty to comply with the Protocol it is recognised that there may be situations where a school does not feel that it can comply with a Fair Access Request.
48. It is expected that in the first instance any such disagreements should be resolved by discussion and negotiation between the school and the Local Authority, formal enforcement action will only be taken in the last resort.
49. Where it is necessary for the Local Authority to request a direction it will follow the process set out in the Department for Education's guidance "Fair Access Protocols: Principles and Process August 2021" and the Direction Flow Chart attached to the guidance.
50. As part of this process it is the responsibility of the local authority and the Academy to document the case for and against admission.

Part two

Norfolk fair access models

Fair access panels (FAPs) – secondary

51. Fair Access Panels (FAP) are regularly convened groups of secondary senior leaders who meet to decide placements of hard-to-place pupils as well as managed moves and reintegrations from the UET Pathfinder School.
52. Five FAPs are convened to cover appropriate geographical areas and details of the current panels can be found in Appendix A.
53. Each Panel will adopt the standard Terms of Reference and documentation and a copy is attached in Appendix B.
54. Each school identified as part of a panel is a member of the panel and is bound by the decision of a majority of members regardless of whether a representative attends the meeting.
55. The FAPs are chaired by a representative of the Local Authority and supported by the Fair Access & Exclusions Team. A representative of the UET Pathfinder School (UET Pathfinder School) will attend as will other colleagues from Children's Services as appropriate. The Local Authority will keep records of numbers placed through the panels to inform decision making and ensure equitable distribution.
56. Where a panel fails to identify a placement the Fair Access Manager will identify a school based on the needs of the pupil, local school information and the allocation numbers that are regularly circulated to all Panel members. The Fair Access Manager will notify all parties as to which school should admit and the rationale for the decision.
57. If a school refuses to comply with a Fair Access request in respect of a pupil as described in paragraphs 9 and 10 the Fair Access Manager will enforce the request through use of the direction process with the School Adjudicator for maintained schools and the Secretary of State through the Education Skills and Funding Agency for academies. The direction process cannot be used to enforce a Managed Move as such pupils are not covered by the statutory Fair Access Protocol.

Fair access panels – primary

58. Due the difficulties in holding regular panels for the large number of primary schools in Norfolk Fair Access panels at primary level will be held on an ad hoc basis when it has not been possible to agree a managed move or reintegration from the UET Pathfinder School as well as where the Admissions Team have been unable to obtain a place through the in-year admission process.
59. Recognising the difficulties that senior staff may have in being able attend meetings at primary level these panels will be undertaken as a pare exercise as follows:
 1. An appropriate number of local schools within a reasonable distance of the home address of the pupil or pupils that need school places are identified by the FAET.

2. Those schools are contacted jointly by email and asked if there are any concerns about admitting additional pupils into the relevant year groups. The email will include a spreadsheet to enable school to enter details of any concerns.

3. The Fair Access Manager will make a decision as to which schools should admit the pupils' requiring places. The Fair Access Manager will consider any concerns raised by school and may consult with the appropriate Inclusion Advisers and the Admissions Manger as part of the decision-making process.

4. Schools are notified jointly by emails of the allocations.

Re-integrations from the UET Pathfinder School

- 60.** Staff at the UET Pathfinder School will co-ordinate the transition of pupils to an alternative mainstream school and will maintain records of pupil transitions to ensure an equitable distribution between local schools.
- 61.** Additionally staff at the UET Pathfinder School will arrange transitions for any pupil who has been permanently excluded (including exclusions from the independent sector and from other Local Authority schools) or who is currently on their roll where a mainstream school has been identified as providing an appropriate education. Staff will work with the identified local school to support re-integration and pupils will be dual registered during the transition to the new school. Staff at the UET Pathfinder School will also maintain records of these pupils to ensure an equitable distribution between local schools.
- 62.** Where the UET Pathfinder School is unable to identify a school to reintegrate a pupil who is ready to return to mainstream education the case will be referred the appropriate Fair Access Panel to identify a school. As such pupils are one of the statutory categories of pupils that must be placed using the Fair Access Protocol the Local Authority can enforce the panel's decisions where necessary.
- 63.** Reintegrations are subject to a 12 week trial period during which the pupil is dual registered with the UET Pathfinder School and the trial school. Upon the successful conclusion of the trial the pupil is removed from the roll of the UET Pathfinder School and is placed on the role of the trial / new school. Any extension of the trial period must be agreed by the UET Pathfinder School and the trial school and any disagreements must be referred to the Local Authority.
- 64.** All parties must sign the Reintegration agreement which sets out the terms of the reintegration prior to the pupil starting at the trial school.
- 65.** The Local Authority will provide transport to the trial school to cover the total period of the reintegration trial period and for the total period that that the pupil attends the school after a successful trial.

Managed moves

Appendices

Appendix A

Current fair access panel membership

East

- Caister Academy
- Great Yarmouth Charter Academy
- Ormiston Venture Academy
- Cliff Park Ormiston Academy
- Lynn Grove Academy

North

- Acle Academy
- Alderman Peel High School
- Aylsham High School
- Broadland High School
- Cromer Academy
- Fakenham Academy
- Flegg High Ormiston Academy
- Litcham School
- North Walsham High School
- Reepham High School
- Sheringham High School
- Stalham High School

West

- Downham Market Academy
- Icen Academy
- King Edward VII Academy
- King's Lynn Academy
- Marshland High School
- Smithdon High School
- Springwood High School
- St Clements High School
- The Nicholas Hammond Academy
- Thetford Academy
- Wayland Academy

Central

- City Academy Norwich
- City of Norwich School
- Framingham Earl High School

- Hellesdon High School
- Jane Austen College
- Notre Dame High School
- Open Academy
- Ormiston Victory Academy
- Sewell Park Academy
- Sprowston Community Academy
- Taverham High School
- The Hewett Academy
- Thorpe St Andrew School
- University Technical College Norfolk

South

- Harleston Sancroft Academy
- Attleborough Academy
- Dereham Neatherd High School
- Diss High School
- Hethersett Academy
- Hobart High School
- Long Stratton High School
- Northgate High School
- Old Buckenham High School
- Wymondham College
- Wymondham High School

Appendix B

General terms of reference

Purpose of the panel

- To discuss issues around admission and inclusion.
- To agree placements for hard to place pupils referred by the Fair Access Manager.
- To agree Managed Moves where schools have failed to obtain agreement from other schools.
- To agree reintegration's from the UET Pathfinder School where the UET Pathfinder School has failed to obtain agreement from local schools.

Principles

- The Fair Access Panel (FAP) is part of Norfolk's Fair Access Protocol and the decisions of the FAP will take account of the principles within the Protocol.
- The key principle of the Fair Access Protocol is to ensure an equitable distribution of pupils between local schools.
- Any child that has been removed to home educate shall in the first instance be offered a place back at the original school if no other parental preference expressed or the Admissions Team have failed to identify a school place subject to the provisions of paragraph 26 of the Protocol.
- Where a Panel fails to identify a placement the Fair Access Manager will identify a school based on the needs of the pupil, local school information and the allocation numbers that are regularly circulated to all Panel members. The Fair Access Manager will notify all parties as to which school should admit and the rationale for the decision.

Membership

- The headteacher, principal or member of the senior leadership team from the schools on the list attached at Appendix A will make up the Panel.
- The Panel will be chaired by Norfolk County Council's Fair Access Manager and administration support will be provide by the Fair Access & Exclusions Team.
- The meeting will also be attended by a representative of the UET Pathfinder School for Norfolk and such other representatives of the local authority as appropriate.
- All members of the Panel are bound by any decision of the Panel whether the member is in attendance or not.

Meetings

- At secondary level meetings will take place to comply with the statutory requirement to place pupils within 20 school days. Primary meetings will be called on an ad hoc basis where required.
- Meeting will generally take place using Teams but the first meeting at the beginning of each school year to be held in person.
- All members will submit details of any pupils they want to place to the Fair Access manager one week in advance of the meeting.
- The Fair Access Manager will keep a record of all pupils placed through the Panel to ensure that an equitable distribution is maintained.