

Somerset Council Fair Access Protocol



Somerset
Council

Version number	Date launched	Contact	Review date
Final. Version 1	September 2026	Preventing Exclusion – Service Manager	April 2029

1. About this Protocol

- 1.1 This protocol should be read in conjunction with The School Admission Code 2021 and the Fair Access Protocols Guidance August 2021.
- 1.2 The Fair Access Protocol is a process established by the local authority in collaboration with all schools in the area. Its purpose is to allocate school places promptly to children who are considered vulnerable or who are experiencing challenges in obtaining a school place during the academic year.
- 1.3 Every local authority must have a Fair Access Protocol (FAP) which **must** have been agreed with the majority of schools in its area. Once it is agreed with the majority of schools in its area, all admission authorities **must** participate in it.
- 1.4 This protocol complies with the School Admissions Code and reflects the Fair Access Protocols guidance from August 2021 issued by the Department for Education.
- 1.5 Please refer to the Fair Access Allocation Panel Standard Operating Procedure for comprehensive details regarding the implementation of Somerset's Fair Access Protocol.

2. Introduction

- 2.1 The School Admissions Code 2021 ensures school places are allocated openly and fairly, using processes that serve most children's needs. It is expected that most children will be admitted through normal admissions processes. In Somerset, we refer to normal admissions processes as Level 1.

The Fair Access Protocol is initiated for children who fall within certain categories (refer to section 3.2) when they encounter challenges in obtaining an in-year school placement, provided that reasonable efforts have been made to secure a place through the established admissions procedure.

- 2.2 Some children will not secure a school placement through normal admissions process, and the Local Authority Admissions and Entitlements Team will consider the case and determine a placement. These children are generally unplaced because there are no places available in the local area. In Somerset, we refer to this process as Level 2.
- 2.3 Some children will not secure a school placement through normal admissions processes because there is evidence, they have challenging behaviour (as defined in the School Admissions Code 2021.3.10.76). These cases will be referred to the Preventing Exclusion Team. In Somerset, such instances are classified as Level 3.
- 2.4 The purpose of Somerset's Fair Access Protocol is to ensure that vulnerable children and those who are having difficult securing a school place in-year, are allocated a place as quickly as possible.
- 2.5 Somerset's Fair Access Protocol is essential in safeguarding Somerset children by facilitating prompt access to education for those who are most vulnerable. The Fair Access Protocol should be considered only after all other avenues for securing a school placement have been exhausted. Whenever feasible, children ought to be admitted through the standard in-year admissions process as a first measure.
- 2.6 Somerset's Fair Access Protocol ensures all schools share responsibility for admitting vulnerable children, including those permanently excluded or with challenging behaviour, through a transparent system. This system uses data to identify how many children have been placed into each school via the Fair Access Protocol. We refer to this system as Equitable Share.

3. Children eligible for the Fair Access Protocol

- 3.1 The Fair Access Protocol serves as a safety net for vulnerable children and should only be used to place children in the specified categories when they cannot secure an in-year school place despite reasonable efforts through normal in-year admission processes. This is either where the parent/carer has made an application for at least one school, including their catchment or nearest school from their home address and have been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.

3.2

- a) Children either subject to a Child in Need Plan or a Child Protection Plan or having a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Fair Access Protocol.
- b) children living in a refuge or in other relevant accommodation at the point of being referred to the Fair Access Protocol.
- c) children from the criminal justice system.
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education.
- e) children with special educational needs (but without an education, health and care plan), disabilities or medical conditions.
- f) children who are carers.
- g) children who are homeless
- h) children in formal kinship care arrangements.
- i) children of, or who are, Gypsies, Roma, Travellers, refugees and asylum seekers.
- j) children who have been refused a school place on the grounds of their challenging behaviour and referred to the Fair Access Protocol in accordance with paragraph 3.10 of the Code.
- k) children for whom a place has not been sought due to exceptional circumstances.
- l) children who have been out of education for 4 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.

3.3 Only children classified under categories **d** and **j** may be automatically referred for placement consideration at level 3 of the Fair Access Protocol.

3.4 Children in category **e** can undergo an Education Health and Care Needs Assessment. While this assessment is ongoing, they are eligible for a school

placement under the Fair Access Protocol, which may provide faster access to a mainstream school. However, some parents or carers may choose to wait for the assessment outcome and have a school placement secured through the statutory assessment process. If parents opt for a placement via the Fair Access Protocol, the child will be discussed at the Fair Access Allocation Panel, and a school placement will be identified.

- 3.5 Children in all other categories who have been unsuccessful in obtaining a placement through standard in-year admission procedures must be referred for placement in accordance with the Fair Access Protocol. Referral will usually arise from a local authority team, following discussion with a school or family.
- 3.6 Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place must be identified within twenty school days.

4. Interaction between the in-year admissions process and Somerset's Fair Access Protocol

- 4.1 Parents may apply for a school place at any time and cannot be denied the chance to do so. If a parent is refused a school placement for their child, they must be provided the opportunity to appeal to an independent appeal panel.
- 4.2 When an in-year application is received, the admission authority must not deny a child entry to a school on the grounds that they are, or may be, eligible for placement through the Fair Access Protocol. The application should be handled in accordance with the standard in-year admissions procedures. Fair Access Protocols must not serve as a mechanism to bypass the established in-year admissions process.
- 4.3 If the admission of the child is agreed but the child ticks one of the fair access categories above, the school may wish to request the Admissions and Entitlements Team log the admission under equitable share at level 2. The school should identify the primary fair access category when contacting the team.
- 4.4 For children refused a place at level 2 the Local Authority will usually ask the catchment school for the home address to admit the student. where possible, the local authority will take account of the circumstances of the individual pupil. In deciding a placement every effort will be made to ensure that transport arrangements, which may be the responsibility of parents, are reasonable and cost effective.
- 4.5 If a school identifies within the first term after admission that a pupil qualifies under the Fair Access Protocol and demonstrates challenging behaviour as defined by the School Admissions Code 2021. (3.10.76), the school should contact the Admissions and Entitlements Team. Supporting evidence will be

necessary. Upon agreement, the admission will be recorded in the equitable share data for the school. Additions to the equitable share data are only permitted within the first term following admission.

- 4.6 If an admission authority rejects an in-year application, it should assess whether the child qualifies for placement via the Fair Access Protocol, referencing the categories in paragraph 3.17 of the Code (also set out in section 3.2 of this Protocol). If so, the admission authority must inform the local authority, which will determine eligibility. If approved for Fair Access Protocol placement, parents will be notified.

5. Participation in the Fair Access Protocol

- 5.1 All schools in the area are required to participate in the Fair Access Protocol. The Head Teacher (or their representative) will take part in discussions and decision-making about placing children referred under the protocol and admitting an equitable number of children when requested in line with the Fair Access Protocol. If the Head Teacher delegates a representative to attend in their place, the representative **must** be able to agree school placements.
- 5.2 In Somerset we hold these discussions in the Fair Access Allocation Panel and aim to ensure that all children referred are provided with access to an appropriate school placement in a timely manner. We will consider the perspectives of other agencies, such as the Virtual School, Social Workers, Educational Psychologists and Health Professionals to support decision-making.

6. Making placement decisions for children referred to the Fair Access Protocol

- 6.1 Placement decisions are made at the Fair Access Allocation Panel which is convened and chaired by the local authority.
- 6.2 Placement decisions are made by the Head Teachers or their representatives.
- 6.3 The decision can be made by using the Level 3 Equitable Share data, which ensures that no school is asked to take a disproportionate number of children with challenging behaviour or by a school offering a placement.
- 6.4 If the Head Teachers do not reach a consensus, the matter will be decided by a vote.
- 6.5 In the event of a tie on the vote, the Level 3 Equitable Share data will be used.
- 6.6 The local authority will provide Level 3 Equitable Share data in advance of the meeting, which includes the following categories:

- a) 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 and have been allocated a place at a school.
- b) Children who have been refused a school place on the grounds of their challenging behaviour and referred to the Fair Access Protocol in accordance with paragraph 3.10 of the Code and have been allocated a place at a school.
- c) Children who have been permanently excluded and have an EHCP. These children will not be placed via the Fair Access Protocol and will have a school placement confirmed through SEND statutory processes. However, when a mainstream school admits a child with an EHCP following a permanent exclusion, the school will be credited with admitting this child and will be included on the Equitable Share data.
- d) Children Looked After who have challenging behaviour. The Fair Access Panel cannot be used to place CLA, however, when a mainstream school admits a CLA and there is evidence of previous challenging behaviour, the school will be credited with admitting this child and will be included on the Equitable Share data.
- e) Schools who have agreed to admit a child as part of a managed move to avoid a permanent exclusion will be credited with admitting this child and will be included on the Equitable Share data.
- f) Children who have had a school placement identified via a School Attendance Order who have challenging behaviour as defined in the School Admissions Code 2021. (3.10.76). The Fair Access Panel may be used to identify a placement where necessary. The School Attendance Order remains a separate legal process which must still be followed. However, when a mainstream school admits a child in accordance with a School Attendance Order and there is evidence of previous challenging behaviour, the school will be credited with admitting this child and will be included on the Equitable Share data.

For points c-f, schools will need to notify the local authority when they have admitted a child in these categories, in order for the data to be applied.

If a school identifies within the first term after admission that a pupil qualifies for points c-f and demonstrates challenging behaviour, the school should notify the Preventing Exclusion Team. Supporting evidence will be necessary. Upon agreement, the admission will be recorded in the Level 3 Equitable Share data for the school. Additions to the equitable share data are only permitted within the first term following admission.

- 6.7 Each category is equally weighted, acknowledging that all identified children with challenging behaviour are likely to require a comparable level of support for transition, regardless of how their school placement was identified.
- 6.8 The timescale for Level 3 Equitable Share data will be credited in the equitable share until the child is no longer on roll. If a child placed in a school in accordance with the Equitable Share data category list leaves the school during this timescale, they will be removed from the data set to ensure data accurately shows active children from these categories on roll at the setting.
- 6.9 The Level 3 Equitable Share data is calculated as a percentage of the total school's roll. Where a school has a 6th form college, the number of students beyond year 11 will not be included.
- 6.10 Placement decisions will be made on a geographic basis from the child's home address. Each child discussed at the Fair Access Panel will have the nearest 10 schools with the lowest equitable share from their home address identified as being within scope to be allocated, and the Level 3 Equitable Share data will be provided accordingly.
- 6.11 Where a school has been judged by Ofsted under the framework November 2025 as requiring **Urgent Improvement** in relation to **Behaviour and Attendance**, the school will be granted a temporary exemption of a year upon release of the OFSTED report from admitting pupils under the Fair Access Protocol who present with challenging behaviour as defined by the school admissions code 2021. This exemption is justified on the grounds that admitting such pupils could **prejudice the efficient education of existing pupils and hinder the school's improvement plan**. Any decision to apply this exemption must be clearly documented and approved by the local Fair Access Panel. The Panel will also agree how to adjust the equitable share at the end of the exemption period so that previously exempt schools are not required to simply catch up with the equitable data.
- 6.12 Within the Fair Access Allocation Panel, the school's panel representatives must consider:

The needs of the child in question:

- Prior to making placement decisions, it is essential to assess whether a child has specific needs and to determine which school is best equipped to address and support those requirements.

The views of the schools concerned:

- All schools must be treated fairly, equitably and consistently. No school, even with available places, should have to take a disproportionate number of students who have been permanently excluded or display challenging behaviour.

- The Fair Access Protocol must not require schools to automatically admit a child via the Fair Access Protocol in place of another child permanently excluded from the school.
- If a school gives strong reasons, such as health and safety concerns, for not admitting a child under the Fair Access Protocol, these should be considered before deciding on placement.

Parental Preference:

- Local authorities or admission authorities are not required to fulfil parental preference when allocating places through the Fair Access Protocol; however, parents' views should be duly considered.
- Parental input can offer important context that assists decision-makers in the Fair Access Protocol process in evaluating the suitability of a particular school placement for a child, as well as identifying any specific needs the child may have.

- 6.13 The local authority will always recommend the school with the lowest score/percentage is identified as the next school to admit a child, however if an alternative school offers a placement to a child, this can be agreed.
- 6.14 If no schools offer a placement to a child, the Equitable Share data will always be used to make the placement decision. Where there is a tie-break with the Equitable Share data, the school closest to the home address will be allocated.
- 6.15 There may be exceptional circumstances where the Fair Access Allocation Panel accepts that the child should not be admitted to a school and requires support from the Pupil Referral Unit for a period, before the child returns to the Fair Access Allocation Panel for a school to be allocated.

7. Admission to school following the allocation of a school place via Fair Access Protocol

- 7.1 The local authority will notify the parent/carer of the allocated school and will arrange for a joint meeting to be held between the parent/carer, school, local authority and any relevant education, health or social care professionals supporting the child. Arrangements should be made to ensure the child can start school as soon as possible.

8. Escalation Procedures

- 8.1 If a school fails to respond or refuses to admit a pupil within 7 calendar days of being asked to take a pupil under the Fair Access Protocol, the escalation procedure will be initiated (flowchart in appendix 1).

- 8.2 If a parent disagrees with the school placement, the Fair Access Allocation Panel may review the decision in exceptional cases if the parent provides a clear rationale; however, there is no further right of appeal.

If a parent agrees with the decision to return their child to a mainstream school but disagrees with the specific school identified, the Fair Access Allocation Panel will not conduct a further review of the decision. Parents will be informed that they may apply for their preferred school using the standard in-year admissions process.

9. Directions

- 9.1 Admission authorities are required to admit children under the Fair Access Protocol, even if there is a waiting list. If they fail to comply, they may be directed to admit the child.
- 9.2 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. See paragraphs 3.23 to 3.25 of the Code.
- 9.3 Where a local authority considers that an academy will best meet the needs of any child, it can ask the Secretary of State to intervene – the Secretary of State has the power to direct the admission of any child to any academy under the academy's funding agreement. See paragraphs 3.29 of the Code.

10. Fair Access Protocol Review

- 10.1 This Fair Access Protocol is effective for 3 years.
- 10.2 Schools should write to the LA if they have concerns about the effectiveness of the Protocol in the first instance by emailing the Preventing Exclusion Service Manager at Preventing Exclusion PreventingExclusion@somerset.gov.uk or contacting the Inclusion Advice Line on **0300 123 2224**.
- 10.3 If the majority of schools can no longer support the principles and approach of Somerset's Fair Access Protocol, they should initiate a review with the local authority.
- 10.4 A new Protocol will only be accepted with consent of the majority of schools.
- 10.5 The existing Protocol will remain binding on all schools until the point at which a new Protocol is adopted.

Appendix 1

Escalation Procedure if a school fails to admit a pupil within 7 calendar days.

Escalation Procedure		
Stage 1	Stage 2	Stage 3
Fair Access Allocation Panel to review decision to identify school if appropriate/necessary. If agree to pursue a place, letter to be emailed to the school requesting admission. In exceptional circumstances, if not agreed to pursue a place, letter to be sent to the school withdrawing the approach. New school to be identified using equitable share and approach letter sent. Response from school required confirming agreement in principle to admit or refusal within 7 calendar days, in line with DfE guidance. In cases where a Fair Access Area Allocation Panel review is not appropriate or necessary, a decision to pursue a place will be taken at LA strategic level and referred straight to stage 2.	Letter from the Education Service Director to the Chair of Governors requiring admission / issuing a notice of intention to direct. Letter from the Education Service Director to the Academy Trust issuing a notice of intention to seek a direction from the Secretary of State. Response from school required confirming agreement to admit or refusal within 7 calendar days.	VA and Foundation school appeals to the Schools Adjudicator within 15 days of letter from Education Service Director. Local Authority requests intervention of Secretary of State for Academy schools and Free Schools. Outcome is binding on all parties Stage 3 will be reported to: SASH / SAPHTO Cllrs with Children and Families portfolio LA annual report to the Schools Adjudicator Regional Schools Commissioner