

Shropshire Fair Access Protocol for Admission to Schools

1.0 Introduction

Fair Access Protocols exist for those children who cannot obtain a place through normal in-year admissions procedures. The Department for Education (DfE) requires all local authorities (LAs) to have a Fair Access Protocol.

This Protocol has been consulted on with head teachers and has been agreed with the majority of schools in Shropshire Council's area. It exists to ensure that access to education is secured for children without a school place, for whom a place at a mainstream school/ alternative provision is appropriate, and to ensure that all schools in an area admit their fair share of children with challenging behaviour or who have been excluded from other schools.

To assist in the smooth operation of the Protocol, panels that include Head Teachers should meet on a regular basis to discuss individual pupils and partnerships. Relevant data should be shared with all schools and academies so that the process is transparent.

1.1 Legislation

The latest revision of the School Admissions Code came into force in September 2021 and restates the principles and scope of the Protocol introduced in April 2006. All admission authorities must participate in their local authority's Fair Access Protocol. Where Shropshire's Protocol refers to 'schools' this relates to all state funded schools including academies and free schools.

This provision will not apply to a looked after child or a child with an Education, Health & Care Plan naming the school in question, as these children **must** be admitted. The protocol should not be required for previously looked after children who were adopted from public care. The local authority may consider use of their general powers of direction or asking the Secretary of State to consider a direction to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with an admission authority promptly.

2.0 Operating the Fair Access Protocol

The aim of this Protocol is to ensure that all unplaced children, but especially the most vulnerable, are offered a place outside the normal admissions round at a suitable school as quickly as possible.

2.1. Categories of children to be included in the Protocol

The following is a list of children of compulsory school age to be included in Fair Access Protocols.

Categories of children to be included in the Fair Access Protocol
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, disabilities or medical conditions (but without an Education, Health and Care plan)
f. children who are carers
g. children with special educational needs, disabilities or medical conditions (but without a statement)
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;
m. previously looked after children for whom the local authority has been unable to promptly secure a school place

3.0 Fair Access Protocol Arrangements

Applications for the year of admission i.e. into Reception, Year 3 in Junior Schools, or Year 7 in Secondary Schools are coordinated centrally by the Admission Team in accordance with the agreed criteria set out in the Parent's Guide to Education in Shropshire booklet published annually in September. Generally, such children will pose no problems of allocation.

Difficulties may arise when a request is made for a school place mid-term. If a school has places available for the relevant year group, (with the exception of a child with an Education Health & Care Plan or Looked after Child) a school is expected to admit the pupil. In certain circumstances, where a child was previously excluded or has challenging behaviour* as defined below, a school with a high proportion of behavioural issues**, is not required to admit the pupil, even if there are vacancies, but may refer the case to the LA for consideration under this protocol. The admission of children with an Education Health & Care Plan must only be arranged after consultation with the Council's Special Education Needs Team.

*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.

** Schools will be considered to have a high proportion of behavioural issues if their level of referrals for Local Authority Pupil Planning meetings are considered by the LA to be at a high level.

Principles

The following principles will need to be applied across every school:

- **all** schools will be required to participate and be fully committed to the protocol.
- pupils who apply for a school place under local admission arrangements will continue to be admitted by schools up to the admission number, with the exception only of pupils with an Education Health & Care Plan issued by Shropshire Council whose admission will be dealt with by the Special Education Needs Team.
- schools should not insist on an appeal being heard before admitting a child under this protocol and would be expected to respond immediately to requests for admission so that the admission of a pupil is not delayed.
- schools cannot cite oversubscription when asked to admit a pupil under the protocol.
- where the school is identified by the LA or Fair Access Panel as the one which would best meet the needs of a child's circumstances and the school refuses to admit the child, the appropriate powers of direction to admit the pupil will apply.
- Where a school is directed to accept a pupil, there will be no additional funding other than through the normal funding arrangements for pupils counted on roll on the previous October's School Census.

- Pupils who fall within this protocol will have priority over any pupils on a waiting list or awaiting an admission appeal, regardless of the school being over-subscribed.

The Fair Access Protocol is not a means for admission authorities to avoid their legal responsibilities to meet parental preference. Therefore, where a parent requests a school place and the school has a vacancy in the relevant year group there is no need for the application to be referred under the Fair Access Protocol unless the requirements set out in para 2.1 apply.

If the school is oversubscribed in the relevant year group, a decision must be made whether to admit above the admission number. If the request for admission is to be refused, the applicant must be informed (by the admission authority) of their right to appeal and the applicant should be referred to the Admissions Team, who will provide information about alternative places available. Consideration will also be given as to whether a placement is required through 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 Policy. The parents of a child refused admission under the Protocol, still has a right of appeal to an independent admission appeal panel.

Due to the rural nature of Shropshire Council's area, it may be appropriate to secure a place at the catchment school, particularly if any of the following apply:

- The child is resident in the catchment area and there is a place for another sibling in the family in a different year group at the same school.
- It would be unreasonable for the pupil to travel if he or she were required to attend another school and/or the LA considers that the cost of transporting the pupil to another school would be unreasonably high.
- The child is Looked After and residing in Shropshire.
- The school can provide the best match for subjects already being studied by pupils in their GCSE years.
- Where the LA is satisfied that there are medical circumstances which make it essential for a child to attend a specific school.

3.1 Fair Access Panel

A Fair Access panel will determine a school place with a supported planned integration if necessary. The panel will take account of the circumstances of the individual pupil, as well as which school will be best able to meet their needs, bearing in mind concerns from schools about admission and seeking to protect any one school from a disproportionate number of placements of children with challenging behaviour. Consideration will also be given to specific factors such as whether a school is in special measures. 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. If the panel agree the pupil is not ready for admission to mainstream school, alternative provision may be offered to parents.

The role of the Fair Access Panel is to consider cases for children who have been

permanently excluded and due to dispute or non-resolution have not been admitted to a new school. The panels will also monitor the number of Fair Access placements (see appendix 2 for Terms of Reference).

4.0 Looked After Children

This provision will not apply to a looked after child or a previously looked after child as these children **must** be admitted. Due to the individual needs of Looked After Pupils, all admissions to schools for Shropshire Looked After Children will be carefully managed by Shropshire Council's Head of Virtual school. Where pupils are hard to place the Head of the Virtual school will deal directly with the school, meeting when appropriate with key staff, social care and safeguarding staff and carers, to ensure placements are made according to need and to support stable care. Top priority is given to Looked after Children, whether or not they live in the defined catchment area for a school. There may be social reasons for not placing a child in their catchment area school, but at an out of area school. Any placements should be made as quickly and as smoothly as possible. Powers of direction as specified in the School Admissions Code will apply.

5.0 Permanently Excluded Pupils

Where a permanently excluded pupil is considered not to be ready for re admission then the LA will consider the need to request an assessment of that child's needs either through TMBSS or Education Psychology Service (EPS), etc.

- Schools cannot direct parents to remove their children from the school unless a formal permanent exclusion has been made.
- Parents will still have the right to appeal to an Independent Panel, but information will be given to that panel if a more appropriate school has already been identified for the pupil.
- A school will not automatically be required to take another child with challenging behaviour in the place of a child excluded from the school.

Aims:

- to ensure the swift and efficient placement of pupils who have been excluded permanently into a new provision within given timescales, i.e., by the sixth day of exclusion.
- to ensure no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour¹
- to implement an open and transparent process for these admissions.

Process:

1. The decision to exclude a pupil should only be taken in response to a serious breach or persistent breaches of the school's behaviour policy and where allowing the pupil to

¹ challenging behaviour will normally be defined as serious criminal breakdown resulting in a conviction or a police caution; behaviour resulting in a permanent exclusion or behaviour resulting in a significant number of fixed term exclusions from which the pupil is at serious risk of permanent exclusion

remain in school would seriously harm the education of the welfare of the pupil or others in the school.

Where practical the Head teacher should give the pupil an opportunity to present their case before taking the decision to exclude. The head teacher should also consider any contributory factors e.g., bereavement, mental health issues or bullying and be able to demonstrate that the school has done everything possible to modify the behaviour through the implementation of a range of strategies including the assistance of external professionals.

2. The Head teacher notifies a member of the inclusion Team within the Education Access Service to discuss the incident and, where appropriate, consider possible alternatives to permanent exclusion.

3. After exhausting all other strategies, if the decision is made to permanently exclude a pupil the Head teacher will notify The Education Access Service by email and send a copy of the letter sent to parents to inform them of the permanent exclusion. The headteacher should also make immediate contact with the parent/carer to inform them of and discuss the decision.

4. On receipt of letter the Inclusion Team Leader in consultation with the Inclusion caseworkers will agree on the appropriate way forward considering any relevant circumstances, e.g., it would not be appropriate to place a pupil with another previously excluded pupil from the same school if they have negative links with each other or with other pupils.

5. A member of the inclusion Team will contact parents explaining the next steps and discusses the parents' options in terms of schools. Parents have a right to state a preference, and if necessary, appeal for a school of their choice if not satisfied with the Fair Access Panel decision. If a school place is offered, through this protocol, an appeal panel will be informed of the offer made which the parent may have refused to accept. The Local Authority has a statutory duty to arrange educational 6th day provision for the child.

6. Transport will normally only be offered to the next nearest school and will be subject to normal distance criteria.

7. Ideally the pupil should begin their new school as soon as possible. However, there may sometimes be a delay in order to ensure the appropriate placement of pupils according to their specific needs.

6.0 Powers of Direction

6.1 General

(For Academies – see 6.2)

- A local authority has the power to direct the admission authority for any maintained school in its area to admit a child 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 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 at 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.

6.2 Academies

- Where a local authority or Fair Access Panel considers that an Academy will best meet the needs of any child, the local authority can ask the Academy to admit that child but has not 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 the Academy's Funding Agreement to direct the Academy to admit a child and can seek advice from the Adjudicator in reaching a decision.

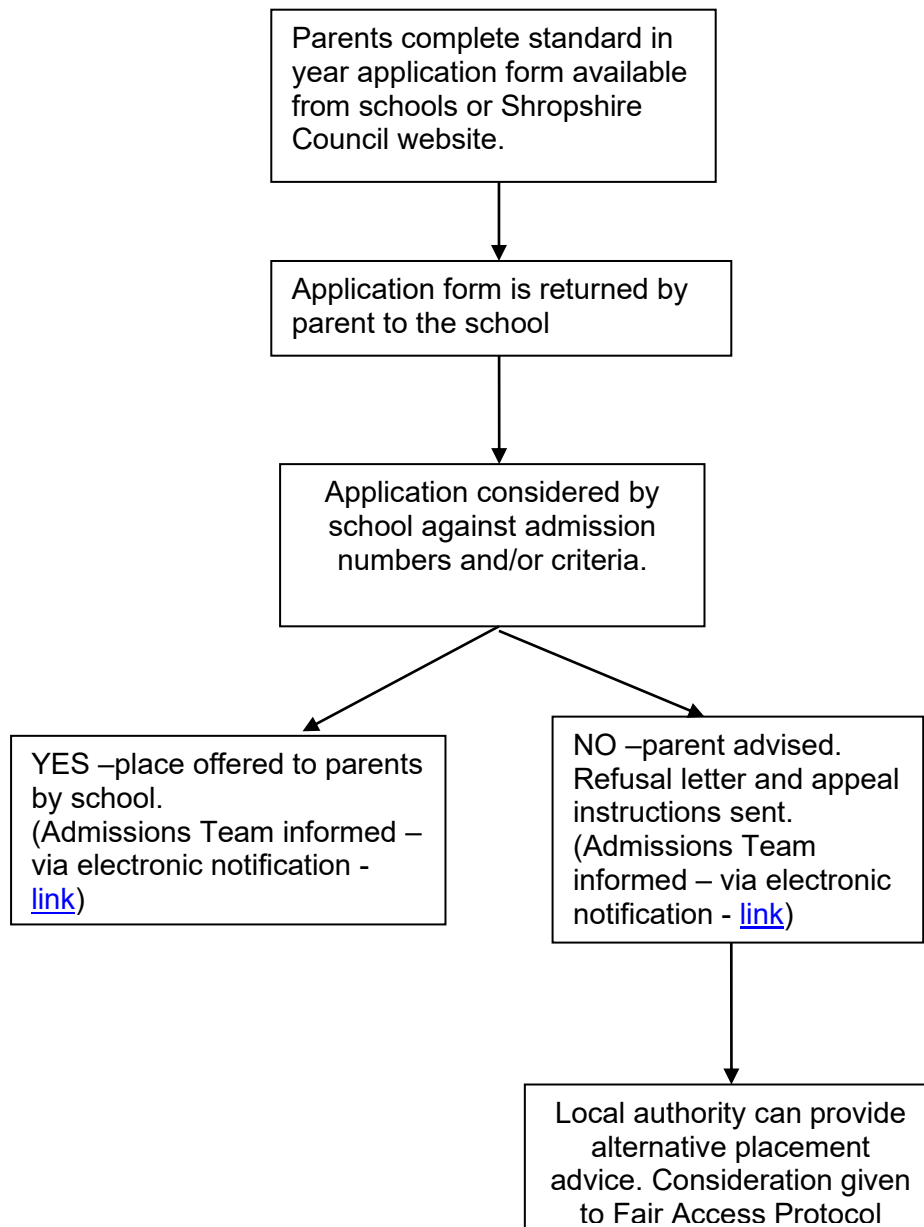
Contact

Queries regarding the operation of the Protocol should be directed to the Admissions Team or appropriate manager

Appendix 1
In Year Admission Process

From September 2013, Shropshire Council will no longer be responsible for co-ordinating in-year admissions - mid-term applications will be made directly to schools.

Process



Written notification to parent of refusal and right to appeal is the responsibility of own admission authority schools post-September 2013.

Aided and foundation schools are responsible for writing to parents. So are academies and free schools although the Admissions Team will do this on their behalf if they have bought into the Admissions SLA.

Appendix 2

Terms of Reference for Shropshire Council Fair Access Panels

1. Role of the LA

- 1.1. To ensure appropriate educational provision for permanently excluded pupils and other Fair Access pupils as listed in Section 2.1
- 1.2 To provide a fair and equitable and open method of allocation of schools for these vulnerable pupils, that is as simple and transparent as possible
- 1.3 To reduce the amount of time such pupils spend without a school place and to enable the pupil to engage with the next placement as soon as possible.
- 1.4 To consider the Special Educational Needs Code of Practice where appropriate
- 1.5 To take informed and realistic decisions about where pupils should be placed

2. Remit of the Fair Access Panel

- 2.1 To receive information about such pupils in 1.1. above and potential receiving schools and make a judgment to allocate a place in a mainstream school.

3. Structure and Process

- 3.1. The Panel forms an integral part of the Re-integration Process. Information is gathered from the appropriate sources and is considered as soon as possible.

- 3.2 All appropriate schools will be notified by e-mail, before the Panel meeting, of the pupils being considered. Head teachers can present information via email concerning their schools to inform Panel discussions concerning the pupil's next placement.

- 3.3 Membership of the Panel will be 3 Headteachers on a rotational basis with attendance and/or information submitted from the following, as deemed appropriate:

- Education Access
- School Admissions
- SEN Team
- Educational Psychologist
- Integrated Passenger Transport Services

- 3.4 The meeting will be chaired by a representative from the Education Access Service who will summarise the discussions in each case and confirm a decision reflecting the view of the Panel.

- 3.5 Meetings of the panel will be scheduled regularly in term time only. Where there are no pupils to be placed, the meeting will be cancelled.

- 3.6 The relevant Officer will present facts of the cases to the Panel.

3.7 Outcomes will be circulated electronically to relevant parties within 2 school days after the panel meeting.

4. Information Protocol

4.1 In order to make an accurate assessment as to the appropriate placement for a pupil and/ or to make judgements against the criteria in the Shropshire SEN Framework, information may be collected and considered from amongst the following by the potential receiving schools that have been identified by the Admissions Team:

- Number of pupils with Education Health and Care Plans (SEN)
- High needs top up budget (shown as percentage of whole school budget)
- Notional SEN Budget
- Number of challenging pupils placed by the LA
- OFSTED status
- View of the excluding Head Teacher
- Any information and/ or comments submitted by the potential receiving schools themselves, including numbers of permanently excluded pupils for the previous and current academic year.

4.2 In order to make an accurate assessment as to the appropriate placement for a pupil, the following information can be collected and considered about the pupil:

- Family Webstar and assessment
- Pupil Profile
- Attendance Record (Excluding School)
- Pastoral support plan, Individual Education plan, Education plan, Personal education Plan Incident List (Excluding School)
- Reports from any relevant agencies.
- Exclusion paperwork
- Views of Pupil and clear Parental Preference
- Transport implications
- Exit Statement from excluding school

A member of the Education Access Service team and/or Admissions Team will collate this information.

4.3 In deciding a mainstream school place, panels will take into consideration:

- Parental Preference, *parents can notify panel in writing of their school preference*
- Pupil Profile
- Distance
- Equitable Share. Equitable share for each school is calculated by the local authority's Education Access Service who maintain a running total based on exclusions from schools and excluded pupils admitted to schools.

4.4 In the interest of equity, the following factors will be taken into consideration, but will not prevent the placement of a child:

- Admissions Numbers
- Indicated Admission Numbers
- Accommodation levels at schools

Governing bodies of schools must implement any decision made by the panel in relation to the admission of these pupils, in accordance with the statutory School Admissions Code and in line with the agreed timescales.

4.5 Schools deemed inadequate under Ofsted and where behaviour problems are a significant issue, will not be considered as possible receiving schools.

5. Escalation Procedures

5.1 If a school fails to respond or refuses to admit a pupil within 7 days of being asked to take a pupil under the Fair Access Protocol the case will be escalated in accordance with the School Admissions Code.

6. Powers of Direction

6.1 The Schools Admission Code 2012 summarises the powers of direction given to Local Authorities under s96 & 97 of the Education Act 1998, and the differing requirements in relation to admissions to Academies.

7. Funding for Receiving School

Where pupils have been permanently excluded, receiving schools will receive:

- The remainder of the AWPU funding calculate pro-rata

8. Monitoring of Effectiveness of the Fair Access Panel

8.1 A termly and yearly audit will be made of all the decisions taken by the Fair Access Panel to monitor consistency and effectiveness which will be included in the LA report to The Schools Adjudicator yearly. In addition, reports will be made to Primary & Secondary CPGs and Headteachers' briefings.