

TRAFFORD SECONDARY SCHOOL'S FAIR ACCESS PROTOCOL January 2022

*This Protocol should be read in conjunction with:
The School Admissions Code (01.09.2021) – in particular paragraphs 3.14 to
3.22 inclusive.
Fair Access Protocols – DFE Guidance for school leaders, admission authorities
and local authorities*

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Section 1: Key Principles of the Fair Access Protocol

Each local authority must 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.

The Local Authority and schools agree to follow the processes laid out in the Admissions Code.

- 1.1 The Protocol must be consulted upon and developed in partnership with all schools in its area. Once the Protocol has been agreed by the majority of schools in its area, all admission authorities must participate in it. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full.
- 1.2 Local authorities must provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the Protocol will take place. Decisions about admitting children under the Protocol can be made by one individual in an admission authority provided that suitable authority has been delegated to that individual. Admission authorities must ensure this process complies with relevant governance requirements.
- 1.3 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.
- 1.4 To accommodate the above requirements
 - ❖ **FAP meetings will take place every 4 weeks (20 school days apart)**
 - ❖ **Grammar schools will only be required to attend where there are eligible pupils to consider.**
 - ❖ **Meetings will be stood down where there are no cases to consider.**
 - ❖ **All schools who are eligible to receive a child should attend. The person attending should have suitable delegated authority to agree a placement.**
 - ❖ **The Panel will be chaired by the Director of Education or a delegated Officer.**
 - ❖ **A summary of allocations will be presented at Standing Heads meetings each half term for transparency and recording in the minutes. The allocation table can be accessed by schools by contacting FAP@trafford.gov.uk**

1.5

FAP Panel will need:

	Information	Responsibility
1	A list of all pupils who have been referred for FAP including school year and locality.	Trafford BSO
2	Pupil Passports for all pupils referred to FAP.	EVC service/TAEP/Admissions
3	Checklist/evidence where a school feels the individual child has particularly challenging behaviour?	School
4	Data and information where an admission authority has a particularly high proportion (in comparison with local schools) of either: <ul style="list-style-type: none"> • 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 resource.	School (refer to 3.5 for more detail)
6	Allocation of schools previously receiving pupils via FAP.	Trafford BSO
7	Provide details of the number of places available in your school to FAP@trafford.gov.uk at least one day prior to the FAP Panel. ¹ (<i>Grammar schools will only need to do this where there is an eligible pupil referred to FAP.</i>)	Schools

¹Local authorities must, on request, provide information to prospective parents about the places still available in all schools within their area. To enable them to do this, the admission authorities for all schools in the area must provide the local authority with details of the number of places available at their schools whenever this information is requested, to assist a parent seeking a school place. Such details should be provided no later than two school days following receipt of a request from the local authority.

1.6 No school - including those with places available – should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol.

- Trafford is a selective authority and, historically, the majority of pupils eligible for the FAP will not be eligible for the Grammar Schools.
- Panel will strive to be equitable and fair, and take into account proportionality when naming schools.

- A representative of the Admissions Authority for each school should be present at FAP Panel to ensure all correct information is factored in.

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

- All secondary aged pupils who have been permanently excluded will be offered provision by Day six. This will be overseen by the EVC Service and is usually at TAEP, but in rare instances other provision may be sought.
- TAEP will regularly assess a pupil's readiness to return to mainstream schools and pupils will usually spend a period of time in a Bridge unit at a mainstream school as part of this process.
- The AP Champion in the EVC Service will monitor the progress of all permanently excluded pupils and will be part of any decision making process re a pupil's readiness to return to a mainstream school, involving relevant professionals in this process via the Alternative Provision Panel (APP).
- Occasionally there may be a sound reason why a pupil cannot attend TAEP and other arrangements will be made by the EVC Service.

1.8 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.

1.9 Admission Authorities must not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol.

1.10 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.

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

- All permanently excluded pupils have a Pupil Passport which should follow them through their journey. Alongside academic, attendance and behavioural targets and outcomes, parent and pupil voice should be captured.
- When a pupil is referred to FAP, the Pupil Passport is included and will include any stated school preferences for FAP Panel to take into account.

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

- 1.13 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.
- 1.14 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.
- 1.15 Challenging behaviour 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.
- 1.16 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.

Section 2: Eligible Pupils

2.1 Fair Access Protocols may only be used to place the following groups of vulnerable and/or hard to place children, where:

- A. they are having difficulty in securing a school place in-year, *and*,**
 - B. it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures -**
 - **where an application has been made to at least two schools and this has been refused, or,**
 - **the local authority has confirmed that there are no places available at any school within a reasonable distance.**
-
- 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;**
 - f) **children who are carers;**
 - g) **children who are homeless;**
 - h) **children in formal kinship care arrangements** as evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.
 - i) **children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;**
 - j) **children who have been refused a school place on the grounds of their challenging behaviour** and referred to the Protocol in accordance with paragraph 3.10 of the School Admissions Code;
 - k) **children for whom a place has not been sought** due to exceptional circumstances - it is for the local authority to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case.

- 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. In most cases use of the Fair Access Protocol should be unnecessary for a previously looked after child.

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Section 3. Children who have been permanently excluded twice or display challenging behaviour

3.1 Where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion.

3.2 The twice excluded rule does not apply to the following children:

- a) children who were below compulsory school age at the time of the permanent exclusion;
- b) children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so);
- c) children whose permanent exclusion has been considered by a review panel, and the review panel has decided to quash a decision not to reinstate them following the exclusion;
- d) children with Education, Health and Care Plans naming the school.

Admission authorities **must not** refuse to admit a child on behavioural grounds in the normal admissions round or at any point in the normal year of entry, except for where the child has been permanently excluded from two or more schools within two years from the last exclusion.

3.3 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.

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.

3.4 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 physical abuse of other persons as a consequence of a disability.

3.5 If an admission authority 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 resource, then they may consider previous behaviour following the guidance below:

- The statement below will **not** apply where an admission authority takes account of past behaviour as evidence for concerns about challenging behaviour, solely for the purpose of making a decision on whether it would be appropriate to refuse admission on the basis described above.
- 'It is for admission authorities to formulate their admission arrangements, but they **must not** take account of reports from previous schools about children's past behaviour, attendance, attitude, or achievement, or that of any other children in the family;'

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Section 4: Local authority powers of direction (general)

4.1 Trafford 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.

4.2 The local authority can only make such a direction in respect of a child within Trafford who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance.

4.3 Trafford must choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded. There can be many factors which affect a pupil's ability to travel independently and the Panel will take all relevant factors into account when making a decision to place a child in a named school.

4.4 Trafford must not choose a school that selects by ability unless the child meets the selection requirements, if those measures would prejudice the provision of efficient education or the efficient use of resources.

4.5 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.

4.6 If, following consultation, the Trafford decides to direct, it must inform the governing body and head teacher of the school.

4.7 The governing body can appeal by referring the case to the Schools adjudicator within 15 days. If it does this, the governing body must inform the Director of Education and the FAP inbox.

4.8 Trafford must not make a direction until the 15 days have passed and the case has not been referred.

4.9 If the case is referred to the Schools Adjudicator, the Schools Adjudicator may either uphold the direction, determine that another maintained school must admit the child or decide not to issue a direction.

4.10 The Adjudicator's decision is binding.

4.11 Where Trafford 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. Trafford 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.

4.12 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 Schools Adjudicator in reaching a decision.

Section 5: Annual report

5.1 Local authorities must produce an annual report on admissions for all the schools in their area for which they co-ordinate admissions. From 2022, it must be published locally and sent to the Schools Adjudicator by 31 October each year covering the prior academic year.

The report must cover as a minimum:

a) information about how admission arrangements in the area of the local authority serve the interests of looked after children and previously looked after children, children with disabilities and

children with special educational needs, including any details of where problems have arisen;

b) an assessment of the effectiveness of Fair Access Protocols including how many children were admitted to each school under it; and

c) any other issues the local authority may wish to include.

88 Section 25(3A) of the SSFA 1998.

The Head of School Admissions produces an annual report for the Schools Adjudicator.

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Appendix **Relevant Legislation**

1. This appendix sets out the primary legislation and regulations most relevant to admissions decisions. Admission authorities, Schools Adjudicators, appeal panels, local authorities and maintained schools must comply with the relevant law as well as acting in accordance with the provisions of this Code. This Code and the School Admission Appeals Code (the Codes) are applied to Academies through their Funding Agreements. The information here aims to signpost the relevant law; it does not aim to provide definitive guidance on interpreting the law: that is for the courts

[School admissions code 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Equality Act 2010

2. This Act consolidates the law prohibiting discrimination, harassment and victimisation and expands the list of protected characteristics. All schools must have due regard to their obligations under the Act and review their policies and practices to make sure these meet the requirements of the Act, even if they believe that they are already operating in a non-discriminatory way.

3. An admission authority must not discriminate on the grounds of disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; or sexual orientation, against a person in the arrangements and decisions it makes as to who is offered admission as a pupil.

4. An admission authority must not harass a person who has applied for admission as a pupil, in relation to their disability; race; or sex.

5. An admission authority must not victimise a person in relation to a protected act either done, or believed to have been done, by that person (e.g. bringing proceedings under the Equality Act 2010) in the arrangements and decisions it makes as to who is offered admission as a pupil.

6. This Act contains limited exceptions to the prohibition of discrimination on grounds of religion or belief and sex. Schools designated by the Secretary of State as having a religious character are exempt from some aspects of the prohibition of discrimination on the grounds of religion or belief and this means they can make a decision about whether or not to admit a child as a pupil on the basis of religion or belief. Single-sex schools are lawfully permitted to discriminate on the grounds of sex in their admission arrangements.

7. Admission authorities are also subject to the Public Sector Equality Duty and therefore must have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.

8. The protected characteristics for these purposes are: disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. 38

9. Further guidance on the Public Sector Equality Duty is available in the Department for Education's Advice to Schools on the Equality Act 2010, on the website of the Government Equalities Office and from the Equality and Human Rights Commission.

Human Rights Act 1998

10. The Human Rights Act 1998 confers a right of access to education. This right does not extend to securing a place at a particular school. Admission authorities, however, do need to consider parents' reasons for expressing a preference when they make admission decisions, though this may not necessarily result in the allocation of a place. These might include, for example, the parents' rights to ensure that their child's education conforms to their own religious or philosophical convictions (as far as is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure).

11. Please note the case of R (Hounslow London Borough Council) v School Admission Appeal Panel for Hounslow (2002) regarding exceptional circumstances⁸⁹.

School Standards and Framework Act 1998

12. Chapter 1 of Part 3 of the School Standards and Framework Act 1998 contains the key provisions regarding school admissions, including the statutory basis for this Code.

13. Section 86 of the SSFA 1998 provides that the admission authority for a maintained school (with the exception of those that select wholly by ability) must comply with any preference expressed by a parent except where to do so would prejudice the provision of efficient education or the efficient use of resources.

14. Section 94 of the SSFA 1998 provides that parents (and in some circumstances children) may appeal against a decision to refuse admission to the school. Two or more admission authorities in the same local authority area may make joint arrangements.

15. The Codes largely include the provisions relating to school admissions made in regulations. The most relevant regulations are: a) The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012; b) The School Admissions (Infant Class Sizes) (England) Regulations 2012; c) The School Admissions (Appeals) (England) Regulations 2012; and d) The School Information (England) Regulations 2008.

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Appendix 2: Quick guide to Trafford FAP processes

- ❖ FAP meetings will take place every 4 weeks (20 school days apart).
- ❖ Grammar schools will only be required to attend where there are eligible pupils to consider.
- ❖ Meetings will be stood down where there are no cases to consider.
- ❖ All schools who are eligible to receive a child should attend. The person attending should have suitable delegated authority to agree a placement.
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- ❖ In order to allocate swiftly and fairly, FAP Panel will need:

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- A representative of the Admissions Authority for each school should be present at FAP Panel to ensure all correct information is factored in.

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Appendix 3: Flow Chart for Trafford FAP processes

