

Academic year  
2022-23

# Fair Access Protocol for Kingston schools



achieving  
for children

## **Contents**

1. Introduction	<b>3</b>
2. Principles of the protocol	<b>3</b>
3. Identification	<b>4</b>
4. Children with challenging behaviour (as defined by the DfE)	<b>6</b>
5. Referral process	<b>6</b>
6. Considering applications	<b>8</b>
7. Allocation	<b>8</b>
8. Achieving an equitable distribution of pupils under the FAP	<b>9</b>
9. Review of the Protocol	<b>9</b>
Appendix 1 - Referral to Fair Access Panel form (FAP1)	<b>10</b>
Appendix 2 - Additional background information for the Fair Access Panel form (FAP2)	<b>12</b>

## 1. Introduction

- 1.1 This Fair Access Protocol ('the Protocol') is written in accordance with the School Admissions Code 2021 ('the Code'). This requires each local authority (LA) to have a Fair Access Protocol, and all admission authorities **must** participate in its implementation in order 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 quickly as possible, minimising the time the child is out of school.
- 1.2 In agreeing to a protocol, the local authority **must** ensure that 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 behaviour.
- 1.3 This document sets out Kingston borough's Fair Access Protocol and describes how it will be applied to ensure that access to education is secured quickly for children and young people from Reception to the end of Year 11 who have no school place. It also establishes that schools in Kingston will admit up to an agreed quota of children and young people who are hard to place, in each year group, whether or not the school is oversubscribed.

## 2. Principles of the protocol

- 2.1 All schools within Kingston borough agree to fully participate and work within the Protocol.
- 2.2 The protocol **must not** be used in place of the usual in-year admissions process. A parent can make an in-year application at any time and is entitled to have their preference met wherever possible, as well as the opportunity to appeal a decision when a place is not offered, even if the child has been offered a school place via the Protocol.
- 2.3 The Protocol **must** only be used for vulnerable and unplaced children<sup>1</sup> that meet the prescribed categories set out in paragraph 3.17 of the Code (also set out in pages 4 to 5 of this document).
- 2.4 The Protocol aims to reduce the time that vulnerable children are out of school. It **must not** be used to delay admission. Unless the school meets the criteria set out in paragraph 4.2, a school **must** admit a pupil straightaway under normal in-year admission procedures, even if the pupil meets the Fair Access criteria. Referral to the Fair Access Panel (FAP) **must** be seen as the last resort to secure a school place for a child.
- 2.5 The operation of the Protocol applies to in-year admissions outside the arrangements of annual coordination and is triggered when a parent of an eligible child has not secured a place under in-year admission arrangements at a suitable school with vacancies within

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<sup>1</sup> The definition of 'unplaced children' is those not on a school roll, whose parents have been unable to secure a school place through the normal admissions process and where it has not been possible to secure a place at an alternative suitable school. The in-year application guidance informs parents that they should not withdraw their child from their current school until they have secured a place at an alternative school.

reasonable travelling distance of the home. It will not apply where a suitable place has been offered to a child and this has not been accepted. In this case, the child will be referred to the Education Welfare Service as a potential child missing education.

- 2.6 This protocol will not apply to Looked After Children, who are not included under Fair Access. Neither will it apply to pupils with an Education, Health and Care Plan, as their admissions are dealt with under separate arrangements in accordance with the SEN Code of Practice.

### 3. Identification

- 3.1 Kingston schools participating in coordination **must** have all in-year applications processed via the local authority, and these **must** be made on a Kingston in-year application form. When a school receives an application directly, the school **must** forward a copy of the application to School Admissions so that all children are tracked for safeguarding and Children Missing Education ('CME') purposes.
- 3.2 Every in-year application **must** be considered within five school days of receipt, and never later than 10 school days of receipt.
- 3.3 The FAP is intended to act as a safety net for the most vulnerable. As such, it may only be used to place the following categories of children, where a child is 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 in-year admissions process:
- a. children either subject to a Child in Need Plan or a Child Protection Plan<sup>2</sup> or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the FAP;
  - b. children living in a refuge or in other Relevant Accommodation<sup>3</sup> at the point of being referred to the FAP;
  - 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;

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<sup>2</sup> Child in Need Plans and Child Protection Plans are plans of help and protection to address safeguarding and welfare needs, where a child has been assessed by the local authority as being a child in need under Section 17 of the Children Act 1989 and/or as suffering or likely to suffer significant hardship under Section 47 of the Children Act 1989. Where a local authority is advised that a child who has moved into the local authority had a Child in Need Plan or Child Protection Plan previously and meets the criteria outlined, this information may need to be checked with the previous local authority.

<sup>3</sup> 'Relevant accommodation' is a safe place to stay for victims and their children fleeing domestic abuse. This can include, but is not limited to, refuges, specialist safe accommodation, sanctuary schemes and second stage accommodation.

- e. children with special educational needs (but without an education, health and care plan)<sup>4</sup>, disabilities or medical conditions;
- f. children who are carers<sup>5</sup>;
- g. children who are homeless;
- h. children in formal kinship care arrangements<sup>6</sup>;
- 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<sup>7</sup> and referred to the FAP in accordance with paragraph 3.10 of the Code. This criterion cannot apply during the normal admission round or at any point during the normal year of entry, unless the child has been permanently excluded from two or more schools during the previous two years;
- k. children for whom a place has not been sought due to exceptional circumstances<sup>8</sup>;
- 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 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<sup>9</sup>.

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<sup>4</sup> All schools have a responsibility to support children and young people with special educational needs and disabilities and receive funding specifically to do so (notional SEN budget). This includes children with significant needs who may subsequently, following a period of assessment in the school, require an education, health and care plan for their needs to be met. Exceptionally a school may make an application to the Local Authority for further resourcing where it can be evidenced that a child's needs cannot be met through existing funding.

<sup>5</sup> Children identified by Social Care as formal 'carers' will be considered under this protocol. Self-identified carers will not be considered without confirmation of their carer status from Social Care.

<sup>6</sup> As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.

<sup>7</sup> Further information on the definition of 'challenging behaviour' can be found in section 4 of this protocol.

<sup>8</sup> It is for the local authority to decide whether a child qualifies to be placed via the FAP on this basis, based on the circumstances of the case.

<sup>9</sup> In most cases, use of the FAP should be unnecessary for a previously looked after child. Local authorities are expected to secure a school place promptly for such children and for admission authorities to cooperate with this. Local authorities should consider swift use of their general powers of direction or should consider asking The Secretary of State to consider issuing a direction (as set out in paragraphs 3.26 to 3.29 of the Code) where a school place for a previously looked after child cannot be agreed with an admission authority promptly.

## 4. Children with challenging behaviour (as defined by the DfE)

- 4.1 Where a school 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 (but they have not met the threshold for the twice excluded rule), it may refuse admission and refer the child to the FAP.
- 4.2 Admission authorities may only do this if:
- a. The school has a particularly high proportion of children with challenging behaviour or previously excluded pupils on roll in comparison to other schools; and
  - b. It believes that admitting another child with challenging behaviour would prejudice the provision of efficient education and/or the efficient use of resources.
- 4.3 Behaviour can be described as challenging where it would be unlikely to be responsive to the standard 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.
- 4.4 The behaviour would significantly interfere with the pupil's or other pupils' education, or jeopardise the right of staff and pupils to a safe and orderly teaching and learning environment.
- 4.5 The following reasons on their own **must not** be grounds for considering that a child may display challenging behaviour:
- poor attendance elsewhere;
  - a defined number of fixed-term exclusions without consideration of the grounds on which they were made;
  - special educational needs; or
  - having a disability<sup>10</sup>.

## 5. Referral process

- 5.1 Where a governing body is unable to admit a child, as described in Section 2 (Identification) it **must** refer the case to the LA for action under the Protocol.

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<sup>10</sup> Schools should 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. All schools have a duty to make reasonable adjustments for students with disabilities. Schools should be aware that a child who displays challenging behaviour may do so as a result of their disability or any unmet needs. Schools must therefore consider whether any reasonable adjustments can be put in place to support the needs of a particular child when considering whether admission should be refused on these grounds. The impact and effectiveness of these adjustments **must** also be taken into account in managing presenting behaviours. For example, where a school would have to provide teaching assistant support and put in place an agreed behaviour plan for a pupil with autism, the impact of these arrangements **must** be factored into a decision over whether the child's behaviour would meet the criteria to be considered challenging.

5.2 A referral can be made to FAP where :

- a. the school is recognised as having a particularly high proportion of children with challenging behaviour or previously excluded children in a particular year group.
- b. a school has a high proportion of children with additional needs in the year group – i.e. children with special educational needs, with or without a Education, Health and Care Plan.

5.3 In such instances where the school is unable to offer a place it **must** first discuss the matter with the Head of School Admissions. If it is agreed that the application meets the criteria for FAP, the school **must** formally notify the parent of the reasons for refusal and the statutory right of appeal against this decision. It **must** also complete the FAP1 form (Appendix 1) stating the reasons and particular criterion under which the referral is being made.

5.4 The school **must** send the FAP1 and a copy of the refusal letter to the Head of School Admissions as a part of the referral to the Fair Access Panel. School Admissions will write to the parent(s) to advise them of the referral to FAP and to explain the principles of Fair Access.

5.5 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.

5.6 The Fair Access Panel will meet as required, but no more than once per month. All admission authorities **must** participate in it, and make 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.

5.7 The secondary panel will consist of a representative from each secondary school in the borough, and will take place before the scheduled Headteachers' meeting wherever possible. The primary panel will consist of representatives from each school in the locality area under consideration. Senior representatives of the local authority from School Admissions and Education Services will attend the FAP; additional LA colleagues will be invited to attend where they have direct knowledge of the young person/family.

5.8 Additional background evidence will be sought by the School Admissions team in each case and recorded on the FAP2 form (Appendix 2) to support the Panel decision making process. This will include:

- behaviour records;
- attendance information;
- information on any additional needs;
- curriculum information (e.g. subjects being studied and syllabus information);
- safeguarding information;
- Information from any services supporting the child and/or the family.

## 6. Considering applications

- 6.1 There is no duty to comply with parental preference when allocating places through the Protocol. However, placements through the Protocol will take into consideration:
- background information/circumstances of the case/needs of the child/young person;
  - each relevant school's context;
  - number of allocated places to the relevant year group at each school under the Fair Access or Managed Move process (Appendix 3) during the current academic year;
  - home to school distance when considering an allocation of a school place;
  - parental preference.
- 6.2 The criterion for considering whether a child is already deemed to be of selective ability will be fulfilled by their previous placement at a selective school, or if there is alternative evidence that the child might be of selective ability at the point of entry.
- 6.3 Where possible, consideration of applications through Fair Access may take account of any religious views of the parent (which may include parents stating a preference for a non-faith school). However, this will not override the Protocol nor influence the final decision.

## 7. Allocation

- 7.1 The process of allocating vulnerable and unplaced children and young people to schools will be transparent, fair and consistent. The placements agreed, and their outcomes will be recorded by the Head of School Admissions, This data will be made available to the panel at each hearing to ensure that FAP allocations are shared fairly across all the relevant schools in the borough as part of the decision-making process.
- 7.2 The Panel will make the decision as to which school will be nominated to receive each young person, and the decision will be binding on that school. This may be the school that refused the same in-year admission application.
- 7.3 All schools will be expected to admit pupils who have been duly assigned to their school under the process described above. A school cannot cite oversubscription as a reason for not admitting a pupil via the Fair Access Panel.
- 7.4 A place can be allocated in an Infant class which already has 30 children with one teacher. Admissions via a FAP are identified as 'excepted pupils' in the Infant Class Size Legislation 2012. These children will remain an 'excepted pupil' for the time they are in an infant class or until the class numbers fall back to the current infant class size limit.
- 7.5 Any young person allocated a place at the Fair Access Panel **must** be put on the roll of the allocated school within five school days of that meeting, even if the child is currently at Malden Oaks (or another alternative education provider) until their reintegration is arranged. They will be dual-registered for this time.



- 7.6 The school **must** notify School Admissions of the date on which the young person is put on roll.
- 7.7 Where the parent refuses to accept a FAP allocation, then the school **must** refer the case to the Education Welfare Service in accordance with their attendance arrangements. The child **must** be placed on roll at the allocated school.
- 7.8 Where a maintained school or academy refuses to admit a pupil under FAP, the LA **must** consult with the governing body of the school and the parent before a direction is considered. If the LA decides to direct the school to admit the pupil, it **must** inform the Governing Body and head teacher of the school. The next step will be a referral to the Schools Adjudicator or to the Secretary of State, as appropriate.
- 7.9 Any application for an out-borough child or young person who is considered hard to place will be referred to their home LA to support the admission locally. However, if an application is received, the school will need to respond to the application and offer the right of appeal if a place is refused as described in Section 4 above.

## **8. Achieving an equitable distribution of pupils under the FAP**

- 8.1 Each school will be given an initial limit of admitting two pupils in each year group every academic year under the FAP. This may result in the school going over their admission number and/or accepting a pupil who has previously been refused a place on appeal.
- 8.2 Children to be placed through the Fair Access Protocol take precedence over children on any waiting list the school may hold.
- 8.3 Where a school accepts a pupil under Fair Access who is subsequently permanently excluded within the same academic year then the school's limit of admitting two pupils will be reset accordingly.

## **9. Review of the Protocol**

- 9.1 This protocol will be reviewed at the end of the summer term 2022, or sooner if there is a change in DfE advice.

## Appendix 1 - Referral to Fair Access Panel form (FAP1)

Kingston upon Thames	<b>Referral to Fair Access Panel</b> For vulnerable and/or unplaced children considered hard to place		<b>FAP1</b>
<b>Pupil:</b>		<b>Gender:</b>	<b>DoB:</b>
<b>Address:</b>			
<b>Previous School/Education Provider:</b>		<b>Year Group:</b>	
<b>Additional needs, eg. SEN, access difficulties etc:</b>		<b>Pupil Premium:</b>	
<b>Reason for referral:</b>			
<b>Date letter sent to parent giving reasons for refusal to admit and right of appeal:</b> (please attach copy)			
<b>Information used in the decision not to admit</b>			

<b>Agencies involved</b> (please give names and indicate who is the key worker)			
EWS:		EP:	
Early Help:		CAMHS:	
Other:			
Which of the following issues currently affect this child/young person that places them, in your opinion, in the hard to place category? (Please tick the box and attach appropriate reports)			
Child currently subject to a Child in Need Plan or Child Protection Plan, or having had a Child in Need Plan or Child Protection Plan within the last 12 months		Child living in a refuge or in other Relevant Accommodation	
Child from the criminal justice system		Child in alternative provision who need to be reintegrated into mainstream education, or who has been permanently excluded but are deemed suitable for mainstream education	
Child with special educational needs (but without an education, health and care plan), disabilities or medical conditions		Child who is a carer	
Child who is homeless		Child in formal kinship care arrangements	
Child of, or who is, a Gypsy, Roma, Traveller, refugee or asylum seeker		Child who is a carer	
Previously looked after child for whom the local authority has been unable to promptly secure a school place		Child who has been refused a school place on the grounds of their challenging behaviour and referred to the FAP in accordance with paragraph 3.10 of the Code.	
Child for whom a place has not been sought due to exceptional circumstances		Child who has 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.	

## Appendix 2 - Additional background information for the Fair Access Panel form (FAP2)

Kingston upon Thames	<b>Additional background information for the Fair Access Panel</b>		FAP 2
Pupil:		Gender:	DoB:
Address:			
Referring School/Education Provider:	Previous school:	Year Group:	
Additional needs, eg. SEN, access difficulties etc:	Reason for referral:		
Nearest schools:			
Parental preference:			
Additional information			

Completed by :

Date: