

Academic year
2023-24

Fair Access Protocol for Kingston schools

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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 as quickly as possible, minimising the amount of 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 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. A parent retains the right to appeal a decision when a place is not offered at a preferred school, even if the child has been offered a school place elsewhere via the Protocol.
- 2.3 The Protocol **must** only be used for vulnerable and unplaced children¹ 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 and used 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 reasonable travelling distance of the home.

¹ 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.

- 2.6 It will not apply where an offer of a suitable place for a child has been offered but not accepted. In this case, the parent remains responsible for ensuring their child is receiving a suitable education, and the child will be referred to the Education Welfare Service for investigation as a potential child missing education.
- 2.7 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 10 school days of receipt, and never later than 15 school days of receipt.
- 3.3 The FAP is intended to act as a safety net for the most vulnerable children and young people. 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 Plan² 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 Accommodation³ at the point of being referred to the FAP;
 - c. children from the criminal justice system;

² 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.

³ '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.

- 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)⁴, disabilities or medical conditions;
- f. children who are carers⁵;
- g. children who are homeless;
- h. children in formal kinship care arrangements⁶;
- 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 behaviour⁷ 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 circumstances⁸;
- 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 place⁹.

⁴ 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.

⁵ 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.

⁶ As evidenced by either a child arrangements order not relating to either birth parent, or a special guardianship order.

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

⁸ 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.

⁹ 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

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. 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.

4.4 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 disability¹⁰.

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.

¹⁰ 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. 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.
- 5.2 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 consideration at the Fair Access Panel, 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.
- 5.3 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.
- 5.4 The School Admissions team will make every effort to seek additional background evidence in each case and record this on the FAP2 form (Appendix 12) to support the Panel decision making process. This will include:
- a. behaviour records;
 - b. attendance information;
 - c. information on any additional needs;
 - d. curriculum information (e.g. subjects being studied and syllabus information);
 - e. safeguarding information;
 - f. information from any services supporting the child and/or the family;
 - g. information from the previous school(s), including the latest school report;
 - h. the views of the parent and child (where appropriate).
- 5.5 The School Admissions team **must** provide at least five school days' notice that a panel will be convened. All available paperwork **must** be provided to the panel no later than five school days ahead of the meeting.
- 5.6 Schools **must** provide information on the number of in-year transfers admitted, EHCP and SEN support pupils, and other vulnerable children¹¹, at least two school days ahead of the panel meeting.

¹¹ For the purposes of the FAP, vulnerable children are defined as: children and young people who have a child in need plan, a child protection plan or who are a looked-after child; children and young people on the edge of receiving support from children's social care services or in the process of being referred to children's services or who have previously received support from children's social care services (as identified by local authorities); adopted children or children on a special guardianship order; young carers; children and young people in a family circumstance presenting challenges for them, such as drug and alcohol misuse, parental offending, adult mental health issues and domestic abuse.

6. The operation of the Fair Access Panel

- 6.1 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.
- 6.2 All admission authorities **must** participate in the Fair Access Panel, 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. 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.
- 6.3 The secondary panel will consist of a representative from each secondary school in the borough, and will be scheduled to meet monthly with the exception of July and August. The meetings will be aligned with the Headteachers' meeting as far as is practicable within the Fair Access legal framework. If there are no referrals to be discussed, the meeting will be cancelled.
- 6.4 The monthly secondary panel will have an agenda which will include the following items for discussion:
- a. The outcome of referrals from the previous meeting;
 - b. New referrals for discussion;
 - c. Review of the children previously referred to alternative provision, and their readiness to return to mainstream education;
 - d. Any other business
- 6.5 The primary panel will consist of representatives from each school in the locality area under consideration, and will be arranged on an ad-hoc basis as required. A member of the School Admissions team will take notes of the discussion and allocation decisions at all panels. Allocation information will be collated and shared with the panel.

7. Considering referrals

- 7.1 There is no duty to comply with parental preference when allocating places through the Protocol. Nonetheless, 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.
- 7.2 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. A selective

school may be required to arrange for the testing of a pupil if a parent has expressed a preference for a selective school, though this would need to happen reasonably quickly.

- 7.3 If a child is returning from a period of elective home education, it is expected that the child will return to their previous school, unless they have transitioned to a different phase of education, or if the panel agrees it is not in the child's best interests for them to do so.
- 7.3 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 solely determine the final decision.

8. Allocation

- 8.1 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. Key information and 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.
- 8.2 The Panel will make the decision as to which school will be nominated to receive each child or young person, and the decision will be binding on that school. This may be the school that refused the in-year admission application made by the parent/carer.
- 8.3 All schools **must** 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.
- 8.4 . Children who are admitted into an infant class because there are no spaces in the relevant year group within a reasonable distance of the family home, are an excepted pupil to the Infant Class Size regulations (School Admissions Code 2021 para 2.16(e)).
- 8.5 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 in alternative provision until their reintegration is arranged. They will be dual-registered for this time.
- 8.6 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. The school **must** notify School Admissions of the date on which the young person is put on roll.
- 8.7 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.
- 8.8 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 Headteacher of the school. The next step will be a referral to the Schools Adjudicator or to the Secretary of State, as appropriate.

- 8.9 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.

9. Referring a pupil to Malden Oaks (alternative provision for pupils aged 11-16)

- 9.1 The Panel may decide that a pupil will benefit from a period at Malden Oaks for targeted intervention and assessment, before they are reintegrated into mainstream school. A member of the Pupil Support team **must** be present at the meeting to ratify this decision.
- 9.2 The referral to Malden Oaks will be made by the School Admissions team. If the pupil was previously on roll at a Kingston borough school, a representative from that school **must** attend the Malden Oaks Referral Panel (MORP) to provide background information about the pupil in order to support the MORP's decision making process.
- 9.3 Following an initial three month period, children and young people placed at Malden Oaks will be reviewed monthly by the Fair Access Panel to assess the child's readiness to return to mainstream education.
- 9.4 After a period of no longer than six months, a placement **must** be agreed by the Fair Access Panel, in preparation for a pupil's return to a mainstream setting when Malden Oak's staff determine it is suitable. A meeting will be held with the allocated school, Malden Oaks and the parents to agree a transition plan.

10. Achieving an equitable distribution of pupils under the FAP

- 10.1 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.
- 10.2 It is recognised that schools may be asked to admit pupils who are vulnerable and/or have complex needs under the Protocol that require more resources to provide the appropriate support to allow them to successfully integrate into mainstream school. In order to achieve an equitable distribution of pupils under the Protocol, the following weighting will be applied to the allocation to reflect the potential impact on the school:
- 1 children who are unplaced because there are no spaces in the relevant year group at a borough school;
 - 2 vulnerable children and/or children with additional needs;

- 3 children who have complex needs which are likely to require high levels of support.

10.3 Children to be placed through the Fair Access Protocol take precedence over children on any waiting list the school may hold.

11. Review of the Protocol

11.1 This protocol will be reviewed at the end of the summer term 2024, or sooner if there is a change in DfE advice.

Appendix 1

<p>Panel District</p>  <p>THE ROYAL BOROUGH OF KINGSTON UPON THAMES</p>	 <p>achieving for children</p> <p>FAP1</p>
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Date of Referral		Outcome of Referral	
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PROPOSED OUTCOME *(Please Tick)*

School Placement for Hard to Place Primary		School Placement for Hard to Place Secondary	
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YOUNG PERSON DETAILS

Forename		ULN / UPN	
Surname		Gender	
Date of Birth		Year Group	

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 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 FAP		Child living in a refuge or in other Relevant Accommodation at the point of being referred to the FAP	
Child from the criminal justice system		Child in alternative provision who needs to be reintegrated into mainstream education or who have 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 a formal kinship care arrangement	
Child of, or who is, Gypsy, Roma, Traveller, refugee and asylum seeker		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. 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	
Child for whom a place has not been sought due to exceptional circumstances		Child who has 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	
Previously looked after child for whom the local authority has been unable to promptly secure a school place			

BACKGROUND INFORMATION

Evidence and information considered for decision to refuse

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SUPPORTING DOCUMENTS

Please copy and paste the following supporting information below
(As a cropped screenshot or directly from the document)

Date letter sent to parent giving reasons for refusal to admit and right of appeal:

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Most Recent School Report

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Relevant Recent Behaviour Log

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YOUNG PERSON PROFILE

Support	Currently <i>(Please Tick)</i>	Previously <i>(Please Tick)</i>	Details of Involvement and Relevant Contact Details <i>(Please provide as much historical detail as possible, including support refused)</i>
Pupil Premium			
EHCP			
LAC/PLAC			
CiN			
CP			
Social Services			
Early Help			
CAMHS/FACT			
YOT			
Educational Psychology			
Education Welfare			
Other			

IDENTIFIED NEEDS

Area of Need	Currently	Supporting Information
Cognition and Learning		
Communication and Interaction		
Social, Emotional and Mental Health		
Other		
If not already in place, in your opinion, does this young person require an EHCP?		

CURRENT / MOST RECENT EDUCATION PROVIDER

Name		Telephone	
Address			
Contact		E-mail Address	

REFERRER DETAILS

Name		Position		Date	
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Appendix 2

<p>Panel District</p>  <p>THE ROYAL BOROUGH OF KINGSTON UPON THAMES</p>	 <p>achieving for children</p> <p>FAP2</p>
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Date of Panel Meeting		Outcome from Panel Meeting <i>(To be completed after meeting)</i>	
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PROPOSED OUTCOME (Please Tick)

School Placement for Hard to Place Primary	School Placement for Hard to Place Secondary
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YOUNG PERSON DETAILS

Forename		ULN / UPN	
Surname		Gender	
Date of Birth		Year Group	

YOUNG PERSON PROFILE

Support	Currently <i>(Please Tick)</i>	Previously <i>(Please Tick)</i>	Details of Involvement and Relevant Contact Details <i>(Please provide as much historical detail as possible, including support refused)</i>
Pupil Premium			
EHCP			
LAC/PLAC			
CiN			
CP			
Social Services			
Early Help			
CAMHS/FACT			
YOT			
Educational Psychology			
Education Welfare			
Other			

IDENTIFIED NEEDS

Area of Need	Currently	Supporting Information
Cognition and Learning		
Communication and Interaction		

Social, Emotional and Mental Health		
Other		
If not already in place, in your opinion, does this young person require an EHCP?		

BASELINE DATA					
CAT Scores	Verbal		Non-Verbal		Quantitative
KS2 Levels	English		Maths		Science
KS3 Levels	English		Maths		Science

CURRENT / MOST RECENT EDUCATION PROVIDER			
Name		Telephone	
Address			
Contact		E-mail Address	

PREVIOUS PRIMARY AND SECONDARY SCHOOLS (including Managed Moves)			
School Name (include Local Authority, if not RBK)	Start Date	End Date	Reason for Leaving

ATTENDANCE HISTORY			
Total Attendance	Authorised Absence	Unauthorised Absence	Any Relevant Information

BACKGROUND INFORMATION			
Why is the Young Person Being Referred?			
Suspensions	Date	Reasons for Suspension	Number of Days
Support Provided by School	Date	Details of Support	Level of Success

YOUNG PERSON'S VIEWS

PARENT/CARER INFORMATION			
Full Name		Full Name	

Relationship/ Legal Status		Relationship/ Legal Status	
Address		Address	
Telephone		Telephone	
Parent/Carer Views <i>(Are they aware and in support of the referral?)</i>	<p>[Please note that parental consent is not always necessary for pupils with Fair Access status / children missing education, as the Local Authority has a statutory duty to ensure children are in receipt of suitable education].</p>		

REFERRER DETAILS			
Name		Position	Date

SUPPORTING DOCUMENTS
<p>Please copy and paste the following supporting information below <i>(As a cropped screenshot or directly from the document)</i></p>
Most Recent School Report
Relevant Recent Behaviour Log