



Education Improvement Team

FAIR ACCESS PROTOCOL 2020/21

1. CONTEXT

- 1.1 The School Admissions Code (revised, December 2014) states each Local Authority (LA) must have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that - outside the normal admissions round - unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible.
- 1.2 In agreeing a protocol, the LA wishes to ensure that no school – including those with available places – is asked to take a disproportionate number of children who have been either excluded from other schools, or who have challenging behaviour within the geographical and logistical constraints of the borough. The protocol must also include how the LA will use provision to ensure that the needs of pupils who are not currently ready for mainstream schooling are met.
- 1.3 The Department for Education issued advice on Fair Access Protocols in November 2012. Its principles included:
- that the protocol is not used to circumvent the normal in-year admissions;
 - the need for schools, including Academies, to work together collaboratively taking into account the needs of the child and those of the school;
 - that whilst parent's wishes are recognised, there is no duty to comply with parental preference; and
 - when seeking to place a child under the protocol, all schools should be treated in a fair, equitable and consistent manner.
- 1.4 It is a mandatory requirement of the School Admissions Code that all schools, including Academies, should participate in the LA's Fair Access Protocol. A clear and transparent process should be available for all establishments if - outside the normal admissions process - their School Governing Body does not wish to admit a child with challenging behaviour even when school places are available within the cohort.
- 1.5 The prescribed categories¹ of children of statutory school age that the Fair Access Panel can support are children/young people:
- from the criminal justice system;
 - attending Pupil Referral Units who need re-integration into mainstream education;
 - who have been out of education for 2 months or more;
 - of Gypsy, Roma, Traveller, Refugees, Asylum seeker families;
 - who are homeless;
 - with unsupportive family backgrounds where a place has not yet been sought;
 - who are carers; and
 - with special educational needs (see 1.7), disabilities or medical conditions.

Additional categories² that the Knowsley Fair Access Panel also consider are:

- pupils returning from elective home education;
- year 6 pupils (when requested by identified primary school);
- year 11 pupils; and
- pupils whose parents are to receive a School Attendance Order.

¹ As defined in the School Admission Code, 2014, para 3.15

² As determined by Knowsley LA and associated fair access school member stakeholders

- 1.6 Schools can also make referrals for those in-year admissions they believe exhibit excessive challenging behaviour that cannot be met within the school cohort.
- 1.7 As other legislation and processes are in place, accessing FAP is **not** possible if:
- the child is looked after (CLA);
 - they are a previously child looked after; or
 - they are a child with an Education Health and Care Plan (EHCP).

There is a presumption that pupils with SEND should have their needs met, including reasonable adjustments, in mainstream settings. Referrals to FAP should only be in exceptional circumstances regarding an unplaced pupil where evidence suggests an EHCP process should ordinarily have been pursued. A SEND representative is requested to attend panel meetings when required in an advisory role.

2. OUR PRINCIPLES

- 2.1 The principles for Knowsley's Fair Access Protocol are to:
- be fair and transparent and have the confidence of all schools;
 - acknowledge the real need of vulnerable young people to be dealt with quickly and sympathetically thereby reducing the time they spend out of school; and
 - ensure schools admit pupils with challenging behaviour on an equitable basis.
- 2.2 Whilst the panel is committed to consistency, it recognises that each case will have unique circumstances. Previous decisions may help guide the panel's thinking, but each referral is to be viewed within its own context and decisions made reflect the panel's views for that particular pupil at that particular time.
- 2.3 The panel recognises the importance of the relationships young people form with peers and in neighbourhoods, schools and spaces and how this can have significant contextual safeguarding implications. As part of its decision-making, the panel is respectful of and attentive to these extra-familial risks when placing young people.

3. THE IN-YEAR PROCESS FOR PRIMARY

- 3.1 Primary Schools administer their own In-Year Admissions. Schools are required to inform the Admissions Team if an application appears to fit one of the prescribed categories listed in 1.5 and 1.6.³
- 3.2 For Knowsley resident Key Stage One unplaced pupils, where the last educational placement was a PRU/Alternative Provision, or where the mainstream placement had broken down due to exceptional behavioural issues (including where the child has been permanently excluded), the child will be placed on roll at a mainstream primary

³ If the school **do not** believe the admission would be unequitable or disproportionate, this information can be recorded in cumulative placement data for statistical purposes and to inform future decision making of panel. However, some evidence that the admission meets an agreed category may be required and, in all cases of challenging behaviour, panel would need to agree there is sufficient evidence in respect of the pupil and the cohort before recording the admission in FAP data.

school and recorded as the admission of a pupil with challenging behaviour in placement data. Panel may request funding, if available, to support the proposed new admission arrangements as described in paragraph 6.11

- 3.3 Key Stage Two pupils who have moved into the Knowsley area whose exceptional behavioural needs cannot be met immediately through usual educational provision and the last educational placement was a Pupil Referral Unit or equivalent will ordinarily be placed on the roll of Knowsley Borough Council's Pupil Referral Unit for assessment. This can take place without the need for an initial discussion at FAP.
- 3.4 For all other in-year applications, the processing of a potential school place by the requested school should be expedited as swiftly as possible. The process allows a significant period of twenty school days to complete this, should it be required. Although not compulsory, the requested school may ask for a School Transfer Information form to be completed by the current or previous school to obtain information to assist with the transition process. If this information has not been provided within ten school days and is potentially going to delay the application receiving an outcome, the school must advise the admissions team who will support schools in attempting to obtain the required information. Even if certain information is still not provided, the maximum twenty school days identified for this part of the process will stand, and at this point school will need to:
 - offer a place;
 - offer a trial placement (see section 7);
 - have submitted the FAP referral paperwork; or
 - request FAP grant a time extension because of exceptional circumstances;
- 3.5 Primary school in-year applications are addressed solely to the one school and that school will alert the LA or complete the FAP referral form where necessary. When schools admit pupils with the prescribed characteristics identified in 1.5, there will be an entitlement to record the admission as a vulnerable pupil. This will be identified through the internal admission return.
- 3.6 In exceptional circumstances, a school may feel the admission of a pupil with a prescribed characteristic would affect the efficient delivery of education and efficient use of resources at their establishment and a completion of the FAP referral form would be required and the case presented to panel for a decision.
- 3.7 Similarly, a FAP referral form must also be completed when a school feels unable to meet a pupils' needs based on evidence of excessive challenging behaviour **and** issues within their own settings, through attaching the In Year application form, School Transfer Information form and any other documentation received from the child's current or previous school. Only factual information should be included.
- 3.8 There is a presumption that any other outstanding applications on day 21 will be offered a place by the school.
- 3.9 If the panel uphold a decision to prevent admission to one school, the panel may need to consider other schools within a reasonable distance. Following the meeting, the admissions team will ascertain parental preferences and primary schools will be identified for the following FAP. All schools should be given at least seven days notice to organise representation and prepare any documentation.

4 THE IN-YEAR PROCESS FOR SECONDARY

LA Referrals

- 4.1 The Admissions Team will provide an automatic LA referral to the next FAP for any in-year application that appears to be one of the prescribed categories listed in 1.5. If parental preferences have been identified, the schools will be made aware of this.
- 4.2 Pupils who have moved into the Knowsley area whose exceptional behavioural needs cannot be met immediately through usual educational provision and the last educational placement was a Pupil Referral Unit will ordinarily be placed on the roll of Knowsley Borough Council's Pupil Referral Unit for assessment. This can take place without the need for an initial discussion at FAP.
- 4.3 All Year 11 in-year applications will be individually discussed at panel and those schools admitting will be able to register a vulnerable pupil admission. Whilst the default will be to consider the rationale for mainstream admission, there may be limited places (dependent on funding options) for alternative education arranged by the LA with the pupil placed on the Alternative Provision Census.

School referrals

- 4.4 All other in-year applications will be sent from the Admissions Team to the requested school. Whilst the processing of a potential school place by the requested school should be expedited as swiftly as possible, the process allows a significant period of twenty school days to complete this, should it be required. Although not compulsory, the requested school may ask for a School Transfer Information form to be completed by the current or previous school to obtain information to assist with the transition process. If this information has not been provided within ten school days and is potentially going to delay the application receiving an outcome, the school must advise the admissions team who will support schools in attempting to obtain the required information. Even if certain information is still not provided, the maximum twenty school days identified for this part of the process will stand, and at this point school will need to:
- offer a place;
 - offer a trial placement (see section 7);
 - have submitted the FAP referral paperwork; or
 - request FAP grant a time extension because of exceptional circumstances.
- 4.5 There is a presumption that any other outstanding applications on day 21 will be offered a place by the school.
- 4.6 A FAP referral form is only completed when a school feels unable to meet the pupils' needs based on evidence of excessive challenging behaviour **and** issues within their own settings. The referral form should be accompanied by the In Year application form, School Transfer Information form and any other documentation received from the child's current or previous school. Only factual information should be included.

- 4.7 For secondary in-year applications, parents can identify three preferences on the secondary in-year admissions form. If the panel uphold a decision to prevent admission to one school, the panel can consider, at the same meeting, preferences for other schools. If the child is unplaced, the panel will consider all options when identifying appropriate placement⁴. In these situations, there would typically be a representative from the identified school(s) present who will determine whether to adjourn to the next meeting or discuss the request immediately.

5. THE PANEL AND PROCEDURES

- 5.1 Knowsley's Fair Access Panel consists of a representative from every Secondary establishment in the borough, two Primary representatives and a PRU representative as well as the LA's Behaviour and Inclusion Office. School members should be the Headteacher or their representatives who have been designated to make decisions on their behalf. Representation is expected for every meeting, regardless of whether the school have made any referrals. Other representatives may include further colleagues from the Education Improvement Team and the Learning and Skills Service, but this would typically be in an advisory role and they would not vote in any decisions taken⁵.
- 5.2 For expediency, decisions will be taken if there are a minimum of five Knowsley school representatives present at the meeting. The LA representative will only vote when there is a tie.
- 5.3 Whilst the panel is holding a combined primary/secondary meeting for 2020/21, this format is reviewed on an annual basis. In the event of a primary referral being made to panel, a representative from the individual primary school/s may attend to present a school perspective but this can also be done by written submission to panel.
- 5.4 The Chairing of panel is a neutral role to facilitate effective decision-making. Whether this role is provided by a school representative (possibly on a rotational basis) or a senior LA officer is reviewed on a regular⁶ basis. Clerking facilities, including all administrative duties, remain the responsibility of the LA.
- 5.5 The Fair Access Panel typically meet fortnightly during term time. Currently, meetings are held on Thursday afternoon at 2pm. FAP referrals should be received two clear working days before the meeting (currently by close of day on Monday). Wherever possible, a summarised referral agenda will be sent to designated school email addresses one clear working day in advance of the meeting (currently by close of day on Tuesday) a further email confirming key decisions made and any required actions will be issued the next working day after panel have met (currently Friday).⁷

⁴ It is possible this may include schools previously unavailable due to oversubscription if panel feel this is the most appropriate placement in the circumstance.

⁵ Panel members would be notified in advance of the meeting when a colleague has been requested to attend in an advisory role for any specific case.

⁶ This would be a minimum of annually but could be sooner if required.

⁷ If the meeting day is changed, either on a temporary or more permanent basis, the schedule will be adjusted in accordance with the described timeframes.

- 5.6 The FAP Agenda will consist of:
- **LA referrals (including PRU reintegration)**– pupils meeting FAP categories in 1.5; and
 - **School referrals** - pupils with excessive challenging behaviour (in 1.6).
- 5.7 For both LA and school referrals, the panel is obligated to agree a placement for Knowsley resident pupils who present as unplaced (not on a school roll) or unable to access their last provision (eg due to distance if the child has moved into the area).
- 5.8 A successful Fair Access Protocol is predicated on the principle that decisions taken by the panel are binding. Once a placement decision has been taken by panel, schools/academies are expected to admit the child within seven school days.
- 5.9 Other than community schools, if a school/academy refuses to admit, they must notify the LA of this within seven calendar days of the placement decision. The LA may then inform the school/academy of an intention to issue a direction. The governing body of maintained schools can appeal to the Schools Adjudicator whilst an Academy can set out its reasons for refusing in writing to the LA, both within 15 calendar days. In the case of an Academy, the LA can then choose to apply for a direction from the Secretary of State via the Education Funding Agency. Before any decision to progress direction, the LA and academy should mediate between themselves in order to come to a resolution without the requirement for direction.⁸
- 5.10 There is no legislative timeframe for mediation but, whilst any discussions to confirm placement decisions that are in dispute are ongoing, there is a duty to provide education provision to unplaced Knowsley resident pupils. In the event of a disputed admission, the case will be re-presented to panel for their consideration of what provision should be made. Each scenario will be considered in accordance with the principle set out in para 2.2 of this protocol. Where a cost is incurred, this will typically be funded from the financial allowance described in para 6.11 of this protocol.

6. PLACEMENT RATIONALE

- 6.1 To ensure the Fair Access Panel has a full picture of the equitable way that all schools are working together, cumulative data of in-year admissions, FAP placements, successful and failed trial places will be available throughout the year. This information will be collated by the LA Clerk to FAP and, in order for a child to be recorded in this data, it will always require a completed in-year application e.g. even when a trial has been successful.
- 6.2 In exceptional circumstances, the panel may defer a case to the following meeting if a key piece of information needs establishing to aid decision making, but this may only happen on one occasion.

⁸ The action described in 5.9 of the Knowsley protocol is as legislated (School Admission Code 2014 paras 3.16 to 3.22)

LA referrals

- 6.3 Parental preferences will always be considered in the first instance and open discussions will take place to consider the most appropriate establishment.
- 6.4 If an identified school feel a request is inappropriate, they will need to give full reasons as to why the admission would affect the efficient delivery of education and efficient use of resources at their establishment.

LA referrals for reintegration from PRU

- 6.5 For LA referrals regarding pupils attending Pupil Referral Units who need re-integration into mainstream education, a trial placement is accepted as the appropriate transition route.

LA referrals for School Attendance Orders (SAO)

- 6.6 LA's have a duty to make arrangements to establish the identities of children in their area who are not registered pupils at a school and are not receiving suitable education otherwise and to act on this. Without parental engagement, a notice is served requiring action within 15 days. If unresolved, those schools with availability in the particular year group will be identified and panel will be made aware prior to correspondence sent out listing those schools. If the issue remains unresolved after a further 15 days, a SAO will be issued naming the nearest school (or most appropriate school if panel have identified there are exceptional circumstances preventing the nearest school being named). In exceptional circumstances a school can be named which would result in going over their agreed admission number. There will be an entitlement to record any admission in these circumstances as a vulnerable pupil.

LA referrals for those returning from Elective Home Education (EHE)

- 6.7 Whilst a number of factors can influence the placement of a returning EHE pupil, the default position is the previous Knowsley school in which they were on roll (this may with a view to facilitating a trial place elsewhere). If the pupils last registered base was a school in another authority area or a different phase of education, the panel cannot influence a return to roll and a single registration must be agreed.

School referrals for Excessive Challenging Behaviour

- 6.8 Schools may make a referral to FAP where there is evidence of excessive challenging behaviours. The panel, when deciding whether to uphold a decision (i.e. not to offer a place) consider the following:
- Representation of clear and identifiable reasons why the school are unable to meet the child's challenging behavioural needs;
 - and**
 - Excessive challenging behaviours within a cohort of young people, already within that year group/school.
- 6.9 A successfully demonstrated case for a particular year group is binding for three further FAP meetings (or six school weeks) in relation to all subsequent referrals.

Knowsley Resident pupils out of education

- 6.10 The panel have an ultimate responsibility to identify an educational establishment for any unplaced Knowsley child. In the most problematic of scenarios, this may include revisiting schools where a cohort case has already been proven. All schools involved should be present when such a decision takes place.

Options for admission

- 6.11 Subject to funding and availability and in exceptional circumstances, the panel may propose a supported admission. Any support mechanisms will be identified and ratified by panel during placement consideration. Whilst there is not a prescriptive list, this could include:
- educational psychological assessments
 - teaching assistant support
 - the commissioning of placements at Knowsley Pupil Referral Unit (Meadow Park) once a main registration base has been agreed⁹.

7. TRIAL PLACEMENTS

- 7.1 Trial placements ordinarily take place as an alternative to referring to the Fair Access Panel. It is recognised that such arrangements support a swift resolution for pupils and are a good demonstration of partnership working. Schools need to complete the LA admissions return to confirm details of any trial placements offered.
- 7.2 If schools pursue these approaches, the processes need to be open and transparent. Any failed trial placements need to be presented to the Fair Access Panel using the failed trial template, as they ultimately may result in a parental appeal.
- 7.3 A trial should consist of no more than a twelve week placement with a four-weekly review. Reviews are the responsibility of the school and should be called earlier if the school feels that the placement is failing in order to discuss how to get things back on track. An Education Improvement Team representative can be requested to attend these meetings for Knowsley residents.
- 7.4 There is a presumption that a pupil is placed on the roll of the guest school at the end of the twelve weeks unless a review meeting has taken place in that timeframe which indicates the trial has been unsuccessful and this decision is ratified by FAP.
- 7.5 For registration purposes, the child needs to be dual registered, not educated off site (current/previous school is main registration base and school where trial is being offered is subsidiary). The school where the child is expected to physically attend for the period of any trial placement is responsible for accurately recording the pupil's attendance and following up non-attendance.

⁹ Such placements would be a dual registration basis with the PRU as the subsidiary base.

- 7.6 Some schools also support managed moves, which are agreements between parents, host and guest schools as an alternative to a permanent exclusion. These are arranged at school level and can be across LA borders if logistically appropriate.

8. APPEALS PROCEDURE AND FURTHER APPLICATIONS

- 8.1 Paragraph 3.24 of the School Admissions Appeals Code states that the allocation of a place in accordance with a Fair Access Protocol does not override a parent's right to appeal against the refusal of a place at any school for which they have applied. If an application has been refused despite there being places available, the admission authority must present their case for refusal, demonstrating how admission for the child in question would prejudice the provision of efficient education or efficient use of resources. When considering such an appeal, in addition to considering the appellant's argument for their child to be admitted, the independent panel will take account of the requirements set out in this Fair Access Protocol. The panel must then carefully consider whether the presenting officer has clearly proven that admission of the child would be prejudicial to the school or other children in attendance at that school.
- 8.2 Whilst there is no legislative restriction on when an appeal against a refusal can be lodged by the applicant, the expectation is that this would be no later than 20 school days following the applicant being notified of the appeal. In cases of fair access consideration when places could be refused even if there are vacancies within the admission number, the contextual position of the school at the time the decision was taken is relevant to that decision.
- 8.3 Parents/carers who have applied for a school and received a refusal notification following a Fair Access Panel hearing may not seek to apply again for a place at the same school for the following twelve months. The one exception would be if the chair of the Fair Access Panel is of the opinion that there has been significant and material changes in the circumstances of the parent/carer/school or child, which may justify a further application.

For any enquiries regarding this protocol, please contact schooladmissions@knowsley.gov.uk