

# Fair Access Protocol for in year admissions (Primary)

April 2018

## 1. Background

- 1.1 The School Admissions Code 2014 requires that each local authority must have a Fair Access Protocol (hereafter called 'The Protocol') agreed with the majority of schools in its area.
- 1.2 The purpose of the protocol is to ensure that, outside the normal admissions round ("in year"), unplaced children living in Milton Keynes, especially the most vulnerable, are offered a place as quickly as possible.
- 1.3 In agreeing the 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.
- 1.4 The Protocol must also include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met, and to establish the education provision a child will receive whilst discussions to identify a school place are taking place.
- 1.5 The Protocol sets out the expectations on Milton Keynes Council (MKC) and schools to work together to swiftly identify a school place for those children who have difficulty finding one. Any decision making under the protocol must be fair, consistent and transparent.

## 2. Principles

- 2.1 The following principles will apply to The Protocol:
  - a) The Protocol will not be used to circumvent the normal in year admissions processes.
  - b) The operation of The Protocol is triggered either:
    - i) When a vulnerable / hard to place child has not secured a 'suitable school place' under in-year admission procedures (see criteria in paragraph 3.1 and definition section), or
    - ii) Where a governing body does not wish to admit a child with 'challenging behaviour' (see criteria in paragraph 3.2) outside the normal admissions round, even though there are places available. This will normally only be appropriate when a school has a particularly high proportion of children with high needs or previously excluded children. The governing body must admit the child or refer the case to the local authority for action under The Protocol.
  - c) Children allocated under The Protocol will be placed on a school roll as quickly as possible.
  - d) The operation of The Protocol is not restricted by a school's Published Admission Number (PAN), and must take precedence over any children on a waiting list (School Admissions Code 2014, Para 2.14).
  - e) The operation of The Protocol will comply with paragraph 2.15 of the School Admissions Code 2014, regarding infant class size legislation - Schools will only be required to admit in such circumstances where the child is considered an 'excepted pupil'.

- f) No school will be asked to admit a disproportionate number of children via the protocol, even if there are places available.
- g) There is no duty for local authorities or admissions authorities to comply with parental preference when allocating places through the Protocol, however, the suitability of the allocation will be considered. For instance, where the allocation is to be made to a school where the child has previously attended and there are reasonable grounds (e.g. a safeguarding concern), accompanied by robust evidence, to demonstrate how the placement would be to the detriment of the child. In this instance The Panel may agree to allocate the next nearest available school.
- h) The parent retains the right to appeal for a school place at any school for which they have expressed a preference.
- i) An educational place will be sought as soon as possible. Where there is a substantial delay to securing provision, interim arrangements will be considered on a case by case basis. It should be recognised that where a place is offered but declined by the parent it is the responsibility of the parent to provide suitable education.
- j) The Protocol will not be used as a tool to avoid parental responsibility for ensuring school attendance, therefore if a legal intervention has already started (i.e. a referral has been made to the designated council officer) this will continue regardless of a change in school place.

### **3. Assessing eligibility of young people to be considered under this Protocol**

- 3.1 In line with the School Admissions Code 2014, young people of compulsory school age which have not secured a 'suitable school place' under in-year admission procedures because the local schools are all full, will be considered within scope of The Protocol if they meet one or more of the following statutory categories:
- a) Young people who are in the Criminal Justice system and/or Pupil Referral Units (including Alternative Provision) who need to be reintegrated into mainstream education
  - b) Young people who have been out of education for two months or more
  - c) Young people of Gypsy, Roma, Traveller communities, refugees and asylum seekers
  - d) Young people who are homeless
  - e) Young people with unsupportive family backgrounds from whom a place has not been sought.
  - f) Young people who are carers
  - g) Young people with special educational needs, disabilities or a medical condition (but without a statement, or Education Health Care Plan) where there is professional evidence to support this
- 3.2 Challenging behaviour in Milton Keynes is considered to be where a young person will require significant additional support to ensure a successful placement: The following local criteria have therefore been agreed to define applications that can be referred back to the authority by a school with vacancies, for action under The Protocol as coming from a child with 'challenging behaviour'. In accordance with Principle 2.1.b(ii), this will normally only be appropriate when the governing body of a school believes it has a particularly high proportion of children with high needs or previously excluded children. In such circumstances, The Fair Access Panel will only consider the eligibility of the child when making a decision; however, the referring school will be responsible for ensuring they are able to robustly evidence their case for declining the application to school's independent admission appeals panel if it is challenged by the parent.

- h) Young people who have been permanently excluded from their last mainstream school
  - i) Young people who have a persistent record of absence (below 90% attendance for the last four consecutive complete half term periods) at the current or last school
  - j) Young people where there is significant evidence of challenging behaviour (such as violence).
- 3.3 In accordance with the School Admissions Code 2014, para 3.12, if there are vacancies governing bodies cannot reject an application for a child with challenging behaviour (eligible under para 3.2) if they are a looked after child, previously looked after child or a child with a statement of special educational needs or with an Education, Health and Care Plan naming the school in question, as these children **must** be admitted; however, they may retrospectively refer the case to the Fair Access Panel in order to request 12 month exemption from being allocated another eligible child by the FAP panel (see paragraph 4.7). This does not affect further admissions being requested through the normal routes for looked after children, previously looked after children or children with and EHCP naming the school, if considered appropriate.

#### 4. The Process

- 4.1 All applications will be initially processed via the normal in year process.
- 4.2 Schools that are their own admissions authority must, on receipt of an in-year application, notify the council of both the application and its outcome (as required by paragraph 2.22 of the School Admissions Code).
- 4.3 If the application for an unplaced child is unsuccessful because the local schools are all full, or the application is referred to the council from a school that believes the application has the potential to fall under the Protocol (Paragraphs 2.1.b(ii) and 3.2), a clear process (defined below and attached at Annex A) will be consistently followed. **This process applies to all schools, including those which are full in the appropriate year group:**
- a) The Panel will first determine whether the application does indeed fall under the Protocol. If the Panel does not approve this, then the application will return to the in-year admissions process.
  - b) If the Panel agrees that the application falls under the Protocol then the nearest mainstream school by straight line from the front of the home address to the front entrance of the school will be identified. In the unlikely event of the straight line distance being the same to 3 decimal places, the closest walking distance will be used. If this school has not taken a young person via The Protocol in the last 12 months and there are no concerns about the suitability of the placement (Para 2.1(g), then this school will be identified to admit the young person.
  - c) If the school identified as the nearest school has already admitted a young person via the Protocol in the last 12 months and does not wish to admit another, or the Panel agrees that the placement would be unsuitable, the next nearest school will be identified. This school will then be required to admit the young person, unless this school has also admitted a child under the Protocol in the last 12 months or there are concerns about the suitability of this placement.
  - d) If this does not result in an admission then the process will continue to identify the next nearest school until a school is found which has not admitted a young person under the Protocol this academic year, and where the allocation would not be to the detriment of the young person. In the unlikely event that all mainstream schools have admitted one young person, the process will start again with the closest suitable school.

- e) The decision will be agreed formally by the Panel at the meeting. The Council will then communicate the Panel's decision. The 12 month period of protection will commence from the date of this correspondence.
  - f) The young person must be enrolled at the identified school as soon as possible. It is envisaged that this would usually be **within 10 school days**. Where admission does not take place within this time, the council will pursue the appropriate direction process on behalf of the Panel.
  - g) For children transitioning from Milton Keynes Primary PRU, a meeting with a Specialist Teacher for Social, Emotional and Mental Health, will be offered to the identified school in order to discuss support available and agree a suitable transition plan. **Transition plans will be case specific, and may involve the young person being initially dual rolled, with the physical transition occurring at a later date.** It is expected that this meeting will be prioritised to ensure the young person is enrolled as quickly as possible.
  - h) The Panel will usually meet monthly throughout the academic year.
- 4.4 If there is more than one application for consideration at the Panel, applications will be prioritised for consideration in the following order: 1) Retrospective applications, 2) The date the application was referred to MKC to progress via FAP – earliest first. 3) Blind draw.
- 4.5 Where an application is from an unplaced young person who is homeless but living in Milton Keynes (criterion 3.1(d)), the temporary accommodation address will be considered as the 'home address' for the purposes of identifying the nearest school.
- 4.6 Where an application is agreed as coming from a child with 'challenging behaviour', but where the young person already has an accessible school place or lives outside of the borough, the admission application to the referring school will be declined. The young person will not be offered a place at the closest alternative school, but will instead be advised to contact their current school to discuss the support available for any underlying issues or concerns. The declining school must always offer the right of appeal.
- 4.7 If a school recognises within 6 weeks of admission that a child should have qualified under a Fair Access criterion, but this was either not clear at the time of the admission or the child was admitted ahead of a panel meeting to support parental preference and avoid undue delay, the school can make a retrospective case to the panel that the admission should count as Fair Access and provide future exemption. It will be the responsibility of the school to provide the relevant information to the panel within the 6 week timeframe.
- 4.8 Whilst schools with vacancies are required to admit a looked after child, previously looked after child or child with an EHCP naming the school (School Admissions Code 2014 paragraph 3.12), they may seek a retrospective recognition following the admission (as per paragraph 4.7) if they would otherwise have qualified as a child with challenging behaviour (paragraph 3.2). This will provide future exemption from being allocated another child via the Fair Access Protocol, but will not exempt the school from being required to admit another looked after child, previously looked after child, or EHCP naming the school if there are vacancies. It will be the responsibility of the school to provide the relevant information to the panel within the 6 week timeframe.
- 4.9 Where the application has been referred to the council under Fair Access and the right of appeal has not already been offered when the council write to confirm the FAP allocation, the schools of preference will be declined and in accordance with paragraph 3.24 of the School Admission Appeals Code 2012, the parents will be offered the right to appeal for the schools of preference.

## 5. Reviewing the Protocol

5.1 This Protocol will be in force with effect from April 2018 and will be reviewed in autumn 2019 or sooner if required.

## 6. Definitions

Term	Definition
Looked After Child	As per the School Admissions Code: currently footnote 16 (currently: "A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school")
Previously Looked After Child	<p>As per the School Admissions Code: currently paragraph 1.7: "Children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order). Further reference to a previously looked after children in this Code means such children who were adopted (or subject to a child arrangements orders or special guardianship orders) immediately following having been looked after.</p> <p>Footnote 17: This includes children who were adopted under the Adoption Act 1976 (see section 12 adoption orders) and children who were adopted under the Adoption and Children Act 2002 (see section 46 adoption orders).</p>
Suitable School Place	A place in a mainstream primary school, which is located within statutory walking distance of the young person's principle address.

## Annex A: The Fair Access Protocol Process

