

1. Introduction

- 1.1 The purpose of a Fair Access Protocol (hereafter called 'The Protocol') is to ensure that, outside the normal admissions round ('in year'), unplaced and vulnerable children living in Milton Keynes, and those who are having difficulty in securing a school place, are allocated a place as quickly as possible.
- 1.2 The School Admissions Code 2021, together with the Department for Education guidance 'Fair Access Protocols' set out the key requirements of a Fair Access Protocol, which are agreed locally, to be:
 - a) Each local authority must have a Fair Access Protocol which must be consulted upon and developed in partnership with all schools in its area, in which all schools (including Academies) must participate since it is binding on all schools
 - b) The Protocol should operate outside the normal admissions round ("in year"), to ensure that unplaced young people, especially the most vulnerable, are offered a place as quickly as possible.
 - c) Schools (including academies) should work together collaboratively. There is no duty to comply with parental preference when allocating places through the Protocol but it is expected that the views of the parents are taken into account.
 - d) Fair Access Protocols should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered.
 - e) No school – including those with available places – is asked to take a disproportionate number of young people who have been excluded from other schools, or who have challenging behaviour.
 - f) 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.
- 1.3 This Protocol sets out the expectation on Milton Keynes Council (hereafter the council) and schools to work together to swiftly identify a school place for those young people who are likely to have difficulty finding one.
- 1.4 This Protocol has been reviewed by a working group of the Alternative Education Panel based on the September 2019 policy, which was originally developed jointly by the council with the Milton Keynes Secondary Inclusion Partnership.

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 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 2021, Para 2.15).
- e) The operation of The Protocol will comply with paragraph 2.16 of the School Admissions Code 2021, 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 2021 (para 3.17), unplaced children who are vulnerable and/or hard to place and are of compulsory school age and having difficulty securing a suitable school place in-year, will be considered within scope of The Protocol if they meet one or more of the following statutory categories:

- a) Children either subject to a Child in Need Plan or a Child Protection plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b) Children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c) Children from the Criminal Justice system;
- d) Children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;

- e) Children with special educational needs (but without an Education, Health and Care Plan), disabilities or medical conditions;
- f) Children who are carers;
- g) Children who are homeless;
- h) Children in formal kinship care arrangements;
- i) Children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- j) Children who have been refused a school place on the grounds of their challenging behaviour and referred the Protocol in accordance with paragraph 3.10 of the School Admissions Code 2021;
- k) Children for whom a place has not been sought due to exceptional circumstances (as determined by the local authority);
- l) Children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted; and
- m) Previously looked after children for whom the local authority has been unable to promptly secure a school place.

3.2 Challenging behaviour in Milton Keynes is considered to be where a child 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 to the local 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 only be appropriate when the governing body of a school believes it has a particularly high proportion of either children with challenging behaviour 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 rejecting the application to school's independent admission appeals panel if it is challenged by the parent:

- n) Children who have a persistent record of absence (below 90% attendance for four consecutive complete half term periods) at the current or last school;
- o) Children who have been permanently excluded from their last school or were most recently educated in the UK in alternative provision
- p) Children who have been withdrawn from their last or allocated UK school to be home educated, who make a subsequent application for re-entry into a mainstream school and the local authority has been unable to establish that the home education was suitable
- q) Children in Year 10 and Year 11 who speak no English
- r) Children in Year 11, and Year 10 after Easter that have not accessed a GCSE curriculum
- s) Children who have failed a trial 'managed move' at a particular school but subsequently make an in-year application to the same school
- t) Children who have had multiple fixed term exclusions over the last 6 months at current or last school

3.3 As per paragraph 3.12 School Admissions Code, paragraph 3.2 of the Protocol does not apply to 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" (see definition section); however, they may retrospectively refer the case to the Fair Access Panel in order to request exemption for the remainder of the academic year from being allocated another eligible child by the FAP panel (see paragraph 4.11). 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 processed via the normal in year process except for those applications received for a young person who has most recently been educated in Alternative Education (Criterion D). These applications will be referred directly to Bridge Academy for admission to Alternative Education.
- 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 2.24 of the School Admissions Code).
- 4.3 If the application for an unplaced child is unsuccessful either because the school is full or the application is referred to the council from a school that believes the application has the potential to fall under the Protocol (2.1bii), 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, or for a young person currently on roll at Bridge Academy, the application will be declined and the right of appeal offered.
 - 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. If this school has not taken a young person in this year group via the Protocol in this academic year, and there are no concerns about the suitability of the placement, 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 in this year group via the Protocol this academic year or the Panel agrees that the placement would be unsuitable, then 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 this year group this academic year 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 in the given year group 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 secondary schools have admitted one young person in a particular year group, the process will start again with the closest suitable school.
 - e) The decision will be confirmed formally by the Panel at the meeting, and therefore any concerns regarding the admission will need to be raised, with supporting evidence, at the meeting. All schools are bound by the provisions of the Protocol without exception whether represented in the meeting or not. The decision of the Panel is final, cannot be challenged and is legally binding.
 - f) Where a school is not present, a Panel decision will be communicated by the Chair of the Panel.
 - g) Once a decision is made by the Panel, the school will be expected to admit the young person to a full time place **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.
 - h) The Panel will meet monthly throughout the academic year.
- 4.4 If there is more than one application for consideration at the panel, the applications will be prioritised for consideration in the following order: 1) Retrospective applications, 2) Year Group, 3) Date order the application was received by MKC admissions - earliest first, 4) Alphabetically by surname - A first.
- 4.5 Where schools have more than one campus, each campus will be considered as if it were a separate school for the purposes of identifying a suitable school place. Each campus will therefore be considered separately with regards to distance, and whether they have already taken a young person in the year group via the Protocol; however, the campus will be considered unsuitable if it does not provide education for the relevant year group.
- 4.6 Where an application is from a young person who is homeless (Criterion G), and the family has been placed in temporary accommodation in Milton Keynes, the temporary accommodation address will be considered as the 'home address' for the purposes of identifying the nearest school. If the family are
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living in Milton Keynes but have not been placed in temporary accommodation, the nearest school to the office of “Children and Families” at Milton Keynes Council (that hasn’t already taken a child under the Protocol and the Panel agrees the placement would not be detrimental to the child) will be allocated.

- 4.7 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 current school may seek to arrange a ‘Managed Move’ if considered appropriate (see paragraph 6). The declining school must always offer the right of appeal.
- 4.8 Where a young person is eligible under Criterion P and has been withdrawn from a school to be home educated, the school from which the child was removed from roll will be allocated. This allocation will not protect the school from taking a further allocation via the protocol unless the child was previously allocated but never accessed the place. If the original school place is no longer accessible, or is not situated in Milton Keynes, the normal fair access process will apply.
- 4.9 Where a young person has been permanently excluded from their last school or was most recently educated in the UK at alternative provision (Criterion O), a place will be offered at Bridge Academy. If the previous placement at alternative education was by way of a dual placement, the young person will be offered the same dual placement arrangement with a mainstream school and Bridge Academy. The dual placement school will be credited with having admitted a child under Criterion O. If the previous placement was a dual placement with a Milton Keynes school, the young person will be offered the same dual placement arrangement with their previous school and Bridge Academy.
- 4.10 A young person who speaks English but has not previously accessed a GCSE (or equivalent) curriculum (criterion R) can only fall under the protocol after Easter for Year 10 and throughout the year for Year 11.
- 4.11 If a school recognises within 6 weeks of admission that a child should have qualified under a Fair Access criterion but this was not clear at the time of the admission the school can make a retrospective case to the panel that the admission should count as Fair Access. It will be the responsibility of the school to provide the relevant information to the panel. These will be discussed on a case by case basis and may result in a school being counted as taking more than one FAP allocation in the same year group in the same academic year.
- 4.12 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 2021 paragraph 3.12), they may seek a retrospective recognition following the admission (as per paragraph 4.11) if they would otherwise have qualified as a child with ‘challenging behaviour’. This will provide future exemption from being allocated another child in the same year group 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.
- 4.13 Where a child is accepted at a school to do a trial period via a ‘managed move’, the school may seek recognition following the start of the managed move if they would otherwise have qualified as a child with ‘challenging behaviour’. This will provide future exemption from being allocated another child via the Protocol. It will be the responsibility of the school to notify the panel if the managed move is unsuccessful so that the protection can be removed.
- 4.14 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. Re-integration from Bridge Academy (alternative education)

- 5.1 Where Bridge Academy determines that the needs of a young person on their roll can be met by a mainstream school, it will seek to re-integrate them back to their original school.
- 5.2 If return to the original school is not appropriate (e.g. the child has been permanently excluded, or where it is felt that it would not be in the best interests of the young person for them to return to the original school) a new school place will be secured by way of a 'joint placement'. This will begin as a trial placement for 6 weeks. Bridge Academy may facilitate this process by presenting cases for re-integration at the Alternative Education Panel.
- 5.3 Where re-integration results in the young person being allocated a different school from the one they previously attended, the receiving school will be credited as having admitted a child eligible under paragraph 3.1 Criterion D and 3.2 Criterion O (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).

6. Managed Moves

- 6.1 A 'Managed Move' process has been determined and agreed by all the secondary schools in Milton Keynes, in order to support students who are on roll in a school in Milton Keynes.
- 6.2 A managed move will only be used where it is considered that a 'fresh start' is appropriate, and when both the school and the parents/carers sincerely believe that the individual student has the potential to succeed within an identified setting.
- 6.3 The process will be led by the current school and provides an opportunity to seek an appropriate placement at another Milton Keynes school. This will begin as a trial placement. The young person may return to their original school if the placement is unsuccessful (a copy of the Managed Move Process is set out in Annex B).

7. Reviewing the Protocol

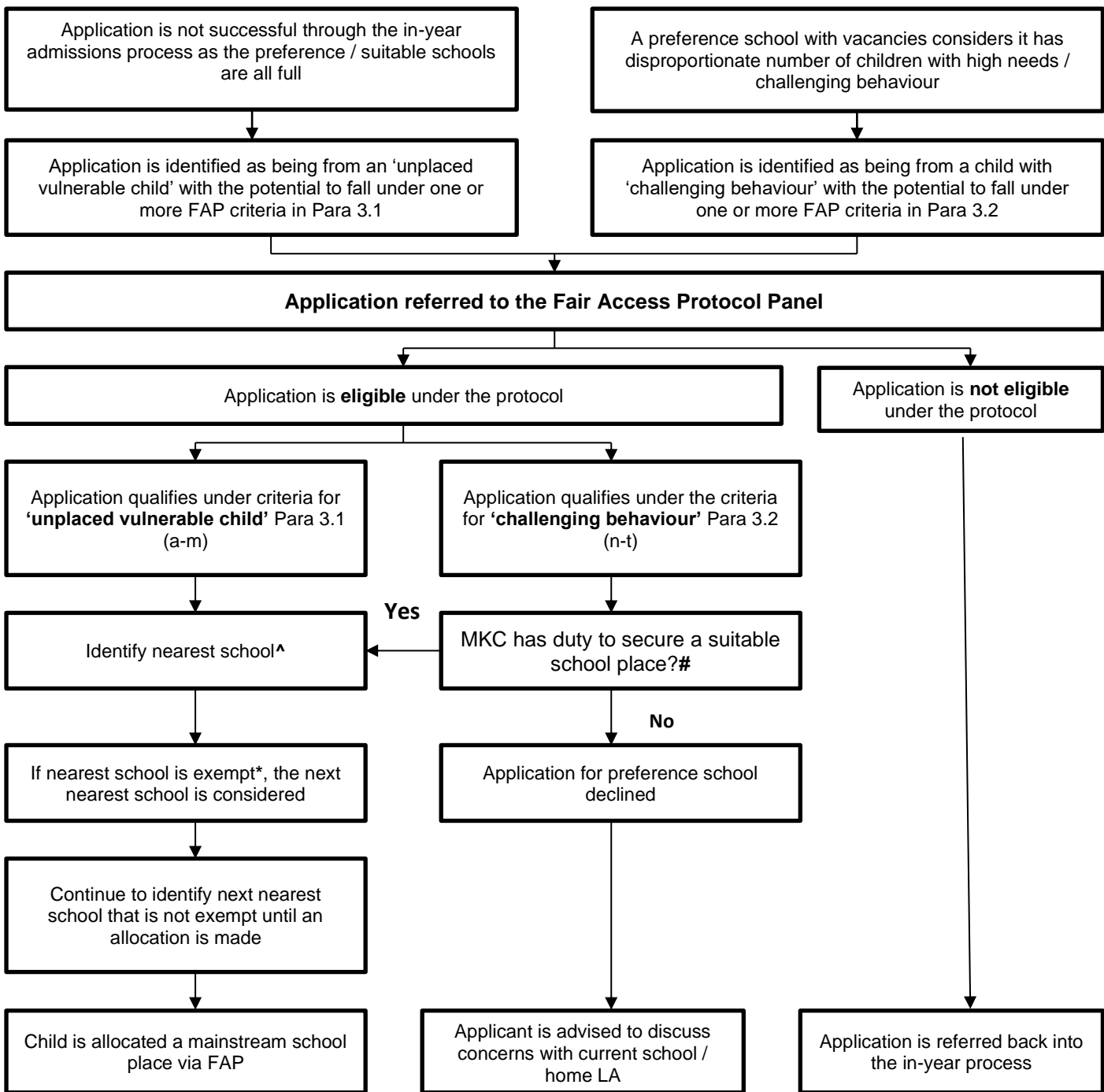
- 7.1 This Protocol will be in force with effect from September 2021 and will be reviewed in Summer 2022 or sooner if required.

8. Definitions

Term	Definition
Looked After Child	As per the School Admissions Code 2021: currently footnote 15 (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	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 and those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. Footnote 16: A child is regarded as having been in state care outside of England if they were in the care of or were accommodated by a public

	<p>authority, a religious organisation, or any other provider of care whose sole or main purpose is to benefit society.</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 principal address.
Unplaced child	<p>A young person from whom no place in a secondary mainstream Milton Keynes school has been allocated or attended.</p> <p>This also applies to a young person attending Bridge Academy who is not dual rolled at a mainstream school in Milton Keynes.</p>

Annex A: The Fair Access Protocol Process



It is envisaged that a child will be on roll within 10 school days from panel's decision. Where appropriate, support will be offered to assist transition. Transition plans will be case specific and may initially involve dual registration with physical transition occurring later. The right of appeal will be offered for all schools of preference.

* An exemption is on the grounds that the school has already been allocated a child via Fair Access within the last 12 months OR where there is evidence to suggest the placement would be detrimental to the child (Para 2.1(g))

If the application is being considered for a child that has been withdrawn to be home educated but has provided no evidence of suitability, the application will be treated as if the child already has a suitable school place because their withdrawal from school was in breach of paragraph 8(d) of the Education (Pupil Registration) (England) Regulations 2006. The child will be allocated back to their previous school.

^ If the child was previously educated in alternative provision, a place will be offered at Bridge Academy.

Annex B: The Managed Move Process

Principles: The discussion that follows begins from the proposition that all secondary schools in Milton Keynes are full in just about all year groups and where this is not the case that the Local Authority or parents/carers will seek places under the Fair Access protocols and normal admissions procedures. Central to the remit of the Secondary Inclusion Partnership is a concern to ensure the best possible outcomes for more troubled students, in mainstream, Special or alternative settings. The Partnership believes that managed moves should only be undertaken where a referring school and parents/carers sincerely believes that the individual student has the potential to succeed within a mainstream setting.

Given the capacity issues outlined above, it is clear that there needs to be rough equity between the numbers of students going into and coming out of schools on managed moves. If that is not the case then the partnership and professional trust elements between schools will be lost and the moral dimension around giving students another chance seriously compromised. It is accepted that schools are culturally different in terms of what is acceptable in behaviour terms. That is a given but should not be a bar to transparent and open partnership working where professional trust and the moral commitment to inclusion are the defining characteristics of a partnership approach.

It is therefore imperative that all mainstream secondary schools are prepared to commit themselves to a system where there is free and unfettered access for the small numbers of troubled students within the system. This will involve schools sending out and taking in students in roughly equal numbers and being prepared to accept the professional judgement of their partners that a student can make progress in a mainstream setting when a request is made of them.

Operation:

- All mainstream schools will commit to responding to a request for a managed move within five working days of the receipt of application.
- Once a trial is agreed it should begin within five working days.
- All schools will agree to taking managed move students in Years 7-10. Any in Year 11 are at the discretion of the receiving school.
- Schools will commit to taking at least one successful managed move in each year group from Years 7-10. Once a school has taken on roll a managed move in any year group further managed moves in that year group will be at the receiving school's discretion.
- Schools will not have more than one ongoing trial managed move in each of Years 7-10 at any one time.
- All managed moves will be brokered with a receiving school by the Secondary Inclusion Partnership which will produce data for MKSH annually on numbers of managed moves. Sending schools must complete the Managed Move Application Form and receiving schools the Managed Move Contract. Copies of both forms must be supplied electronically to the Secondary Inclusion Partnership. Any managed moves not notified to the Secondary Inclusion Partnership at the start of the process will not be deemed to be part of the agreed quota.