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Education Improvement Team

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FAIR ACCESS PROTOCOL

2021/22

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For any enquiries regarding this protocol, please contact [schooladmissions@knowsley.gov.uk](mailto:schooladmissions@knowsley.gov.uk)

## 1. Context

- 1.1 The School Admissions Code (September 2021) requires the Local Authority (LA) to have a Fair Access Protocol (FAP), agreed with the schools in its area, to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place, are allocated a suitable school place as quickly as possible.
- 1.2 The protocol applies to the admission of pupils to schools in Knowsley outside of the normal point of admission. Therefore, a referral to FAP is the result of a pupil requiring placement in-year and should only take place if it can be demonstrated that reasonable measures have been taken to secure a place through in-year procedures and that the pupil meets one of the prescribed categories of children eligible to be placed under the protocol.
- 1.3 The protocol aims to ensure that all schools are treated in a fair, equitable and consistent manner and that no school – including those with available places – is asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the protocol. Whilst parent’s wishes are recognised, there is no duty to comply with parental preference when allocating places through FAP
- 1.4 The protocol will also determine how the needs of children who have been permanently excluded, and children for whom mainstream education is not yet possible, will be met.
- 1.5 The FAP can **only** be used to place the following prescribed categories<sup>1</sup> of children of statutory school age where they are having difficulty in securing a school place:
  - A. Children either subject to a Child in Need Plan or a child protection plan or having had a Child in Need Plan or 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;<sup>2</sup>
  - I. children of, or who are, Gypsies, Roma, Travellers, Refugees and Asylum seekers;
  - J. children who have been refused a school place on the grounds of their challenging behaviour and referred to the protocol;

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<sup>1</sup> As defined in the School Admission Code, 2021, para 3.17

<sup>2</sup> As evidenced by a child arrangements order not relating to either birth parent or a special guardianship order

- K. children for whom a place has not been sought due to exceptional circumstances;
- 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 not accepted
- M. previously looked after children for whom the local authority has been unable to promptly secure a place.

1.6 As other legislation and processes are in place, accessing FAP is **not** possible if:

- the child has an Education Health and Care Plan (EHCP)
- the child is a looked after child (LAC)

It is also expected that previously looked after children (PLAC) or previously looked after children from state care outside of England (IPLAC) would not be required to be referred to FAP as they would normally be considered on the same basis as Looked After Children. The provision within the prescribed categories for these children should only be necessary if a school place has not been secured promptly.

1.7 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 and where strong evidence suggests an EHCP process should ordinarily have been pursued.

## 2. Referral to Fair Access Panel

2.1 Admission Authorities must consider all formal in year applications submitted and must not refuse to admit a pupil unless to do so would prejudice the provision of efficient education and efficient use of resources in the school. In the exceptional circumstance that a school who has an available place feel the admission of an individual pupil would prejudice the efficient delivery of education and efficient use of resources **and** that pupil meets one of the prescribed categories stated in 1.5, the admission authority/school are required to inform the School Admissions Team in the Local Authority by submitting a FAP referral and the application may be presented for consideration by Knowsley Fair Access Panel if eligible.

2.2 When submitting the FAP referral, the school should confirm which prescribed category the pupil meets and provide factual information about the pupil and their own setting as evidence of why they consider placement would not be appropriate. This may include the School Transfer Information form and any other documentation received from the child's current or previous school and information gathered from contact with the parent/carer or other professionals involved with the pupil.

School referrals for Excessive Challenging Behaviour

2.3 Where an admission authority does not wish to admit a child because there is evidence of excessive challenging behaviours they must refer the child to FAP. It is expected that any admission authority will only use this provision if it can demonstrate that it already has a particularly high proportion of children with challenging behaviour or previously

permanently excluded pupils on roll compared to other local schools and admitting another child will thus prejudice the provision of efficient education or the efficient use of resources<sup>3</sup>.

- 2.4 Admission authorities cannot make referrals on the grounds of challenging behaviour in respect of the following pupils:
- looked after children (LAC) and previously looked after children (PLAC);
  - children who have an Education, Health and Care Plan naming the school;
  - children applying in the normal admissions round or at any point in the normal year of entry (unless the child has been excluded from two or more schools)
- 2.5 If an admission authority presents a case that demonstrates a high proportion of children with challenging behaviour or previously permanently excluded pupils on roll, this will remain a valid case for the remainder of the school term in which it is presented in relation to all subsequent referrals.

Referrals for reintegration from a Pupil Referral Unit (PRU)

- 2.6 Knowsley PRU (Meadow Park) can refer to panel any pupils who are of single-registration at the PRU but are considered ready for mainstream reintegration. This may include pupils who have been permanently excluded or those who have previously been placed at the PRU by Fair Access Panel at a time when that pupil was not considered ready to access mainstream provision.

Local Authority referrals for unplaced pupils and Children Missing Education (CME)

- 2.7 Local Authorities have a duty to make arrangements to identify 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 (i.e. the completion of an in-year application form to actively seek a school place) the LA may progress with a School Attendance Order (SAO). Before the Local Authority progresses to the stage of naming a school in a SAO, a referral will be made to FAP and a placement discussed – such referral would be considered under the prescribed category of *'children for whom a place has not been sought due to exceptional circumstances'* and may include pupils registered as EHE but for whom the LA has deemed education delivery as unsuitable.<sup>4</sup>
- 2.8 The Local Authority monitors in-year transfer applications and may refer an application to panel for a placement decision if the pupil is an unplaced Knowsley resident and a place has not been secured through the typical in-year application process in a timely manner (i.e. more than 15 school days). This could include where an application has been made but parental preference cannot be met due to oversubscription. In these cases panel may be asked to discuss and agree an alternative placement offer to be made to the pupil.<sup>5</sup>

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<sup>3</sup> The Admission Code defines behaviour as challenging where it would be unlikely to be responsive to the usual range of 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 and significantly interfere with the pupils/other pupils education or jeopardise the right of staff and pupils to a safe and orderly environment.

<sup>4</sup> The provisions stated within 2.7 and 2.8 is intended to ensure that no single school is asked to take a disproportionate number of pupils being placed via the protocol (see also 3.7).

<sup>5</sup> The provisions stated within 2.8 would typically only be used if the child meets a prescribed category.

## Placement rationale

- 3.1 The panel is obligated to agree a placement for any Knowsley resident pupil who presents as unplaced (not on a school roll) or is unable to access their last provision (for example due to distance or travel constraints if the child has moved into the area).
- 3.2 FAP recognises the need for admission authorities, school leaders and local authorities to work collaboratively, taking into account the needs of the child and the views of the school where the child might be placed.
- 3.3 Unplaced Knowsley resident Key Stage One pupils, whose previous educational placement was a PRU or equivalent alternative Provision, or those who have been permanently excluded, will be placed on roll at a mainstream primary school following discussion at Fair Access Panel. If the parent has not completed an in-year application form they will be asked to identify a school/s of preference and representatives from those schools would be invited to attend the FAP meeting to be involved in any discussion regarding placement, with an opportunity to present any concerns about placement at their setting. Once a placement is agreed, panel may request funding from the Local Authority to support the proposed new admission arrangements of such pupils as described in paragraph 4.1.
- 3.4 Unplaced Knowsley resident pupils in Key Stages two, three or four, whose previous educational placement was a PRU/equivalent alternative provision (typically on a single-registration basis), or those who have been permanently excluded, will ordinarily be placed on the roll of Knowsley PRU (Meadow Park) for assessment. This can take place without the need for an initial discussion at FAP.
- 3.5 For unplaced Knowsley resident pupils who have been referred to FAP under other prescribed categories, and where panel agree that a mainstream setting would not be appropriate, a placement can be made at the Local Authority PRU for assessment.
- 3.6 Professionals at Knowsley PRU will determine when a pupil who is of single-registration is ready to be reintegrated into mainstream education and they will refer that pupil to FAP for placement (as described in paragraph 2.6). In this circumstance a 12 week trial placement on a dual registration basis is accepted as the appropriate transition route to support successful reintegration.
- 3.7 Where FAP determine that a mainstream school place is the most appropriate placement for an unplaced Knowsley resident pupil who has been referred to panel under any category, an open and transparent discussion will take place to determine the most appropriate school placement.
- 3.8 No single school will be asked to admit a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the protocol. Therefore, panel are not required to comply with parental preference (although they must take parents views into account). Panel can make placement at a school above the typical admission limit and in advance of an existing waiting list, and can refuse a place even when a vacancy exists.

- 3.9 If the panel uphold a decision to refuse admission to a school, they may need to consider other schools for placement. Wherever possible this consideration will take place at the same meeting.
- 3.10 In rare circumstances it may be necessary to defer a placement decision to a subsequent meeting in order to ascertain additional information however, all placement decisions must be made within 20 school days of referral.
- 3.11 Knowsley FAP is committed to consistency, but 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 in the landscape at the time of consideration.
- 3.12 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.

## Options for admission

- 4.1 Subject to funding 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. Although 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 agreed<sup>6</sup>.
  - Transport assistance
- 4.2 Some schools support managed moves, which are agreements between parents, host and guest schools and are typically used as an alternative to a permanent exclusion or to promote a fresh start option when other contextual factors are considered to be having an adverse effect on the pupil in their current school setting. These are typically arranged at school level and can be across Local Authority borders if logistically appropriate. It is expected that if a school feels a managed move is an appropriate course of action, it will be initiated without the need for an in-year transfer application to be submitted and without intervention from FAP. A managed move typically means a period of dual registration which can result in a move to single registration on a permanent basis at the receiving school if successful<sup>7</sup>. Schools should note that an unsuccessful managed move does not prevent a parent making a subsequent application for transfer via the in-year transfer process.

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<sup>6</sup> Such placements would be a dual registration basis with the PRU as the subsidiary base.

<sup>7</sup> If a managed move is proposed and agreed following the submission of an in-year application, the in-year transfer application should be withdrawn. Knowsley schools have the option to inform the Local Authority of any managed moves being undertaken via the admissions return and this information may be presented during placement consideration by panel as part of the context of the individual school profile.

## Decisions and appeals

- 5.1 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, all schools are expected to admit the child by registration on the school roll within seven school days.
- 5.2 If a school disputes the placement decision of FAP, they should notify the LA Clerk to panel in writing as soon as possible and within seven school days. The Local Authority will always aim to resolve any dispute but has the power to direct the governing body of a maintained school to admit a pupil and, where an academy is considered to best meet the needs of a child, the Local Authority can ask the Secretary of State to intervene under the academy's funding agreement<sup>8</sup>.
- 5.3 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. Where a cost is incurred, this will typically be funded from any financial allowance available to panel and will thus reduce the balance available for other pupils' options for admission (as described in 4.1).
- 5.4 Paragraph 3.18 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 or prevent the parent from making further in-year applications to other schools.
- 5.5 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 refusal. 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.
- 5.6 If parents/carers have applied for a Knowsley school and received a refusal notification following a Fair Access Panel decision, they should not make a subsequent application for the same school/s during the following sixth month period as the expectation is that the outcome would remain the same. The exception would be if the chair of the Fair Access Panel is of the opinion that there have been significant and material changes in the circumstances of the parent/carer/child or school, which may justify a further application being considered within this timeframe.

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<sup>8</sup> As per sections 96 and 97 of the School Standards and Framework Act 1998 and paras 3.23-3.25 and 3.29 of the School Admissions Code 2021

## The panel and procedures

- 6.1 Knowsley's Fair Access Panel consists of a representative from every Secondary establishment in the borough, two Primary representatives and a PRU representative. School members should be the Headteacher or their representatives who have been designated to make decisions on behalf of the school. Representation is expected for every meeting, regardless of whether the school have made any referrals.
- 6.2 Other contributors to panel may include further colleagues from the Local Authority such as an Education Improvement Officer, the Behaviour and Inclusion Officer, a representative from the Special Educational Needs Team, School Attendance/Children Missing Education Service, and the Learning and Skills Service. These officers would typically attend in an advisory role, and they would not vote in any decisions taken<sup>9</sup>.
- 6.3 For expediency, decisions will be taken if there are a minimum of five Knowsley school representatives present at the meeting. In the event of a split decision and where the vote is tied, further discussion will take place in an effort to reach a majority vote but if this is not possible the Chair of panel or nominated LA Officer will make a casting vote<sup>10</sup>.
- 6.4 Knowsley operates a combined primary/secondary Fair Access Panel meeting so referrals of pupils from both sectors would be heard by the same panel. In the event of a primary referral being made to panel, a representative from the individual primary school/s will be invited to attend to present a school perspective, but this can also be done by written submission to panel.
- 6.5 The Chairing of panel is a neutral role to facilitate effective decision-making and is currently undertaken by the Headteacher of Knowsley PRU. Clerking facilities, including all administrative duties, remain the responsibility of the LA and are currently undertaken by the Senior Admissions Officer.
- 6.6 The Fair Access Panel typically meet fortnightly during term time. Currently, meetings are held on Thursday afternoon at 2pm. The deadline for referrals to FAP in order to be placed on the agenda is two 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 working day in advance of the meeting and a further email, confirming key decisions mad, and any required actions, will be issued the next working day after panel have met.<sup>11</sup>
- 6.7 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 and FAP placements will be available throughout the year. This information will be collated by the LA Clerk to FAP and presented at each meeting.

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<sup>9</sup> 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.

<sup>10</sup> **The nominee will depend upon the circumstance of the referral to avoid conflict of interest.**

<sup>11</sup> 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.