
Education Improvement Team

FAIR ACCESS PROTOCOL

2023/24

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

1. Context

- 1.1 The School Admissions Code 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 child 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 considered 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 FAP¹.
- 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 categories² 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;³
 - 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.

¹ This does not remove parental right to appeal against the refusal of a place at their preferred school via the independent appeal process.

² As defined in the School Admission Code, 2021, para 3.17

³ As evidenced by a child arrangement 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 LA 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 LAC. 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 child 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 child would prejudice the efficient delivery of education and efficient use of resources **and** that child meets one of the prescribed categories stated in 1.5, the admission authority/school are required to inform the School Admissions Team in the LA by submitting a FAP referral and the application may be presented for consideration by Knowsley FAP if eligible.

2.2 When submitting the FAP referral, the school should confirm which prescribed category the child meets and provide factual information about the child 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 child.

2.3 If the child does not meet a prescribed category of FAP and the school of preference has not confirmed that they have reached the operational admission limit in the year group requested, but the decision of the admission authority is to refuse a place (because it would prejudice the provision of efficient education and efficient use of resources in the school), the admission authority must issue a refusal to the applicant in writing confirming the reason for refusal and giving the option of independent appeal. This refusal should be issued within 10 school days of the application being

received and no later than 15 school days⁴. The school must notify the LA school admissions team of the outcome and, if the child is an unplaced Knowsley resident, the pupil may be referred to FAP for placement.

School referrals for Excessive Challenging Behaviour

- 2.4 Where an admission authority has a view not to admit a child because there is evidence of excessive challenging behaviours, they must refer the application 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 resources⁵.
- 2.5 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 with an Education, Health and Care Plan (EHCP) naming the school.
 - children applying in the normal admissions round in the normal year of entry (unless the child has been excluded from two or more schools).
- 2.6 If panel agree that the child referred meets the threshold of challenging behaviour, they will follow the placement rationale as described in section 3 of this protocol. If the child already has an accessible school placement (i.e., they are not unplaced), panel will ratify the decision of the requested school to refuse a place and no further action will be taken (although the applicant retains a right to independent appeal against the refusal of a place).
- 2.7 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 valid evidence 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)

- 2.8 Knowsley PRU (Meadow Park) can refer to panel any children who are of single registration and considered ready for mainstream reintegration. This may include children who have been permanently excluded, or those who have previously been placed at the PRU by FAP at a time when that child was not considered ready to access mainstream provision. There is no minimum time that a single registered pupil must be on roll/in attendance at the PRU before reintegration referral is made as each case will be considered in context.⁶

⁴ In the primary sector, community schools, for whom the LA is the Admission Authority, must not refuse applications on any grounds other than being full to the operational admission limit in the year group without discussion with the LA to confirm any refusal of a place is appropriate.

⁵ 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 pupil/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.

⁶ PEX pupils will not typically commence a reintegration placement until PEX procedure are concluded and the pupil is removed from roll at the excluding school. However, referral to FAP can take place in advance to identify a mainstream school of reintegration placement in readiness for reintegration to progress as soon as possible.

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

- 2.9 Local Authorities have a duty 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 LA progresses to the stage of naming a school in a SAO, a referral can be made to FAP to allow for a transparent placement discussion – 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 children registered as EHE but for whom the LA has deemed education delivery as unsuitable.⁷
- 2.10 The LA monitors in-year transfer applications and may refer a child to FAP for a placement decision if the child is identified as a Knowsley resident child missing from education/unplaced and a place has not been secured through the typical in-year application process in a timely manner (i.e., within 15 school days).
- 2.11 The LA will refer to FAP requests for the placement of any children arriving in borough for whom an application has been made but there is confirmed full/over subscription in all schools within the borough/locality in the year group requested. In the primary sector (years reception to year 6) a referral will be made if every school within the local Knowsley planning area that the child is resident is fully subscribed and/or travel time/distance to the closest Knowsley school to the home address with an available place is over 45 mins travel time. In the secondary sector (years 7 to 11) a referral will be made if every school within Knowsley is fully subscribed, or if the closest Knowsley school with an available place would be more than 70 minutes travel time.⁸

3. Placement rationale

- 3.1 The panel is obligated to agree a placement for any Knowsley resident child who presents as unplaced (not on a school roll) or unable to continue to access their last provision even if they have not yet been officially removed from roll (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 LAs to work collaboratively, considering the needs of the child and the views of the school where the child might be placed.
- 3.3 Knowsley resident children of statutory school age (i.e. those in Key Stages one, two, three or four) who are permanently excluded, will ordinarily be placed on the roll of Knowsley PRU (without the need for an initial discussion at FAP). This will be the provision until PEX procedures conclude, and subsequently until the child is considered

⁷ The provisions stated in 2.9 are intended to promote equitable distribution of this group of pupils defined by the LA as hard to place/vulnerable.

⁸ Travel time includes walking distance and/or by car/public transport and the panel will be mindful of journeys requiring more than two modes of transport. Where a place is applied for and secured at a school outside of what is defined as ‘reasonable’ within this protocol because of parental preference, there would not typically be a requirement to refer the child for placement via FAP.

ready to access mainstream provision again, at which point the reintegration process will be initiated by the PRU.

3.4 Knowsley resident children of statutory school age (i.e. those in Key Stages one, two, three or four) who arrive in borough and whose last educational placement is confirmed as being in a PRU/equivalent alternative provision within another borough on a single-registration basis, will ordinarily be placed on the roll of Knowsley PRU (without the need for an initial discussion at FAP). The intention will be to assess suitability for a mainstream placement; when the child is ready to access mainstream provision again, the reintegration process will be initiated by the PRU.

3.5 For unplaced Knowsley resident children who have been referred to FAP under other prescribed categories, and where panel agree by majority vote that an immediate placement in a mainstream setting would not be appropriate, an initial placement can be accessed at the LA PRU⁹.

In this circumstance a mainstream school placement will typically be identified as the main registration but, prior to accessing this placement, initial attendance would be required at the PRU on a subsidiary registration for a period of six school weeks. Following which a review will determine if there is any requirement for this to be extended to a maximum of 12 school weeks. To ensure the placement plan is transparent to all parties, a representative from both the mainstream school of placement and the PRU should be present at the initial induction/admission meeting with the child and any review meetings.

3.6 Placement at the PRU, for children other than those stipulated in paragraphs 3.3 and 3.4, on a single registration basis would only be an option if the child has not been registered at a mainstream provision for a period of a full school term (or longer) immediately prior to referral **and** at least one of the following can be evidenced:

- significant challenging behaviour in the last school attended.
- the child was not accessing mainstream classroom provision in the last provision due to interventions in place to manage/regulate behaviour – typically being removed from the class for the majority of the school day.
- evidence that the child has been referred for placement in an alternative provider or equivalent PRU provision by their previous/current education setting as a method of intervention to manage/regulate challenging behaviour within the last 12 months of attendance.

3.7 Professionals at Knowsley PRU will determine when a child who is of single registration at the PRU is ready to be reintegrated into mainstream education and will refer that child to FAP for placement (as described in paragraph 2.8). In this circumstance a 12-week reintegration placement on a dual registration basis (the PRU being the main registration and the mainstream school the subsidiary) is accepted as the appropriate transition route. Reintegration cases include regular reviews between all parties and are monitored at each meeting of FAP; panel are required to ratify the outcome of the

⁹ Any consideration of placement at the PRU, either on a subsidiary or single registration basis, will be subject to contextual factors in the PRU at the time of the discussion, and any placement may impact on availability of provisions such as commissioned places for other pupils already on roll at mainstream schools.

reintegration to confirm any decision about the continued registration of the child after the 12-week period is concluded.

- 3.8 Where FAP determine that a mainstream school place is the most appropriate placement for an unplaced Knowsley resident child who has been referred to panel under any category, an open and transparent discussion will take place to determine the most appropriate school placement. The usual expectation is that any placement of a primary age child will be at a school that is within 45 minutes travel time from the home address. The usual expectation is that any placement of a secondary age child will be in a school that is within 70 minutes travel time from the home address.
- 3.9 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 parents views and the contextual situation of the applicant will be into account). Panel can make placement at a school beyond the typical admission limit and in advance of an existing waiting list and can refuse a place even when a vacancy exists.
- 3.10 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.
- 3.11 In rare circumstances it may be necessary to defer a placement decision to a subsequent meeting to ascertain additional information, however, all placement decisions must be made within 20 school days of referral.
- 3.12 Knowsley FAP is committed to consistency but recognises that each case will have unique circumstances. Previous decisions may help guide the panel, but each referral is to be viewed within its own context and decisions made reflect the panel's views for that pupil in the landscape at the time of consideration.
- 3.13 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.

4. Other options for admission

- 4.1 Schools may 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 having an adverse effect on the pupil in their current school setting. These are typically arranged between schools directly and can be across LA borders if logistically appropriate. It is expected that if a school feels a managed move is an appropriate course of action, this 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 successful¹⁰. 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 and progressing a right of appeal if that application is subsequently refused.

5 Decisions and appeals

- 5.1 Once it has been agreed that a child is eligible to be considered under FAP, a school place must be allocated for any unplaced Knowsley resident child within 20 school days.
- 5.2 A successful FAP 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 be in a position to admit the child by registration on the school roll within seven school days (or within the timeframes stipulated by the SAO if the placement decision is within this category).
- 5.4 If a school disputes the placement decision of FAP, they should notify the Clerk to panel in writing as soon as possible and within seven school days. The LA 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 LA can ask the Secretary of State to intervene under the academy's funding agreement¹¹.
- 5.5 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.
- 5.6 Paragraph 3.18 of the School Admissions Appeals Code states that the allocation of a place in accordance with FAP 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. 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.
- 5.7 If parents/carers have applied for a Knowsley school and received a refusal notification following a FAP 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 FAP 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.

¹⁰ 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 LA 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.

¹¹ 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

6 The panel and procedures

- 6.1 Knowsley's FAP 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 take decisions on behalf of the school so as not to create delay. Representation is expected for every meeting, regardless of whether the school have made any referrals and it is possible that placements can be made at schools even if there is not a direct representative from that school in attendance at the meeting.
- 6.2 Other contributors to panel may include LA professionals such as: an Education Improvement Officer/Service Manager, Behaviour and Inclusion Officer, Special Educational Needs Officer and School Attendance/Children Missing Education Officer. These officers would attend in an advisory role providing information relevant to legislation or the individual case for which they may be involved but would not vote in any decisions taken.
- 6.3 The Chair of panel has a duty to facilitate effective decision-making in accordance with the agreed protocol and is a role typically undertaken by a school representative member following nomination and election. The Chair will be confirmed at the beginning of each school year and can be a continuing roll for more than one school year. A Vice Chair will also be elected to deputise on occasion when the Chair cannot be present at meetings. For expediency, decisions will be taken if there are a minimum of five Knowsley school voting representatives present at the meeting. In the event of a split decision and where the vote is tied, further discussion will take place, but if a second vote does not result in a majority decision the Chair will make a casting vote.
- 6.4 Knowsley operates a combined primary/secondary FAP 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 by a school, a representative from the individual primary school/s will be invited to attend to present a school perspective, but this can also be by written submission to panel. Where the LA is making a referral for placement
- 6.5 Clerking facilities, including all administrative duties, remain the responsibility of the LA and are currently undertaken by a Senior Admissions Officer.
- 6.6 The panel will meet fortnightly during term time (if required) to ensure placement decision for any referrals are fulfilled within the required 20 school day period. The deadline for referrals to FAP to be placed on the agenda is two working days before the meeting. The maximum number of referrals heard at any single meeting will typically be eight; in the event that more than this number have been received by the deadline, those children who are unplaced/missing from education will have priority for the agenda. 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 made, and any required actions, will be issued the next working day after panel have met.
- 6.7 To ensure the 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 Clerk and presented at each meeting.