

## Fair Access Protocol for in year admissions

(primary)

### **1. Background**

- 1.1 The School Admissions Code 2021 requires that each local authority must have a Fair Access Protocol (hereafter called 'The Protocol') which must be consulted upon and developed in partnership with all schools in its area.
- 1.2 The purpose of 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.
- 1.3 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 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'. In line with The School Admissions (Infant Class Sizes) (England) Regulations 2012, Regulation 5, an excepted pupil is *'one to whom the school is the only school (apart from any school to which the child has already been refused admission or from which the child has been permanently excluded) which is within a reasonable distance from the child's home, and provides suitable education'*. By nature of this protocol, any unplaced children allocated via the protocol will therefore be exceptions to infant class size legislation.
- 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 school has been placed in 'special measures' or 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), vulnerable and/or hard to place children of compulsory school age who are having difficulty securing a school place in-year because the local schools within reasonable distance are all full, 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 been permanently excluded from their last mainstream school or were most recently educated at alternative provision;

- o) Children 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;
  - p) Children who have been placed on a part time school timetable at current or last school for more than 6 weeks within the last 6 months;
  - q) Children who have received sustained additional 1:1 support within the last 6 months at current or last school;
  - r) Children who have had multiple fixed term exclusions within the last 6 months at current or last school;
  - s) 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;
  - t) Children who have failed a trial 'managed move' at a particular school, but subsequently make an in-year application to the same 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 4.9). 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 2.24 of the School Admissions Code 2021).
- 4.3 If the application for an unplaced child is unsuccessful because the local schools within reasonable distance 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 can be considered and is eligible 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 can be considered and is eligible under the Protocol, then the nearest mainstream school by walking distance from the front

of the home address to the front entrance of the school will be identified. In the unlikely event of the walking distance being the same to 3 decimal places, the closest straight-line 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 panel agrees that a child is purely eligible under criterion “I” out of education and no school within a reasonable distance’, and no other ‘challenging behaviours’ are identified, a school place will be identified at the next nearest school within statutory walking distance to the home address 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 event that all mainstream schools within statutory walking distance to the home address have admitted one young person, the place will be identified via key stage, with the closest suitable school within statutory walking distance to the home address that has admitted the fewest children under the Fair Access Protocol in the relevant key stage.
- d) Where applications are being considered for siblings, the panel give consideration that siblings placed under Fair Access be allocated to the same school or Infant/Junior to support family engagement and single point of contact.
- e) 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.
- f) If this does not result in an admission then the process will continue to identify the next nearest school within reasonable distance 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.
- g) The decision will be agreed formally by the Panel at the meeting. The Council will then communicate the Panel’s decision within 20 school days. The 12 month period of protection will commence from the date of this correspondence.
- h) 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**. It is recognised that in special circumstances attendance on the school site may be delayed beyond this, but this should not delay the enrolment. Where admission does not take place within this time, the council will pursue the appropriate direction process on behalf of the Panel.
- i) For children transitioning from Milton Keynes Primary PRU, a meeting 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.

- j) 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 MKCC 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(g)), 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 child 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 Where a child is eligible under Criterion S, 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 pupil was previously allocated but never accessed the place.
- 4.8 Where a child has been permanently excluded from their last school, or was most recently educated at alternative provision (Criterion N), a place will be offered at Milton Keynes Primary PRU. If the previous placement at an alternative provision was by way of a dual placement with a Milton Keynes school, the child will be offered the same dual placement arrangement.
- 4.9 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.
- 4.10 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 4.7) 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.

- 4.11 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.
- 4.12 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 MK Primary PRU (alternative education)**

- 5.1 Where MK Primary PRU 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. MK Primary PRU may facilitate this process by presenting cases for re-integration at the Primary Inclusion Partnership Meetings.
- 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 N (Children who have been permanently excluded from their last mainstream school or were most recently educated at alternative provision).

## **6. Reviewing the Protocol**

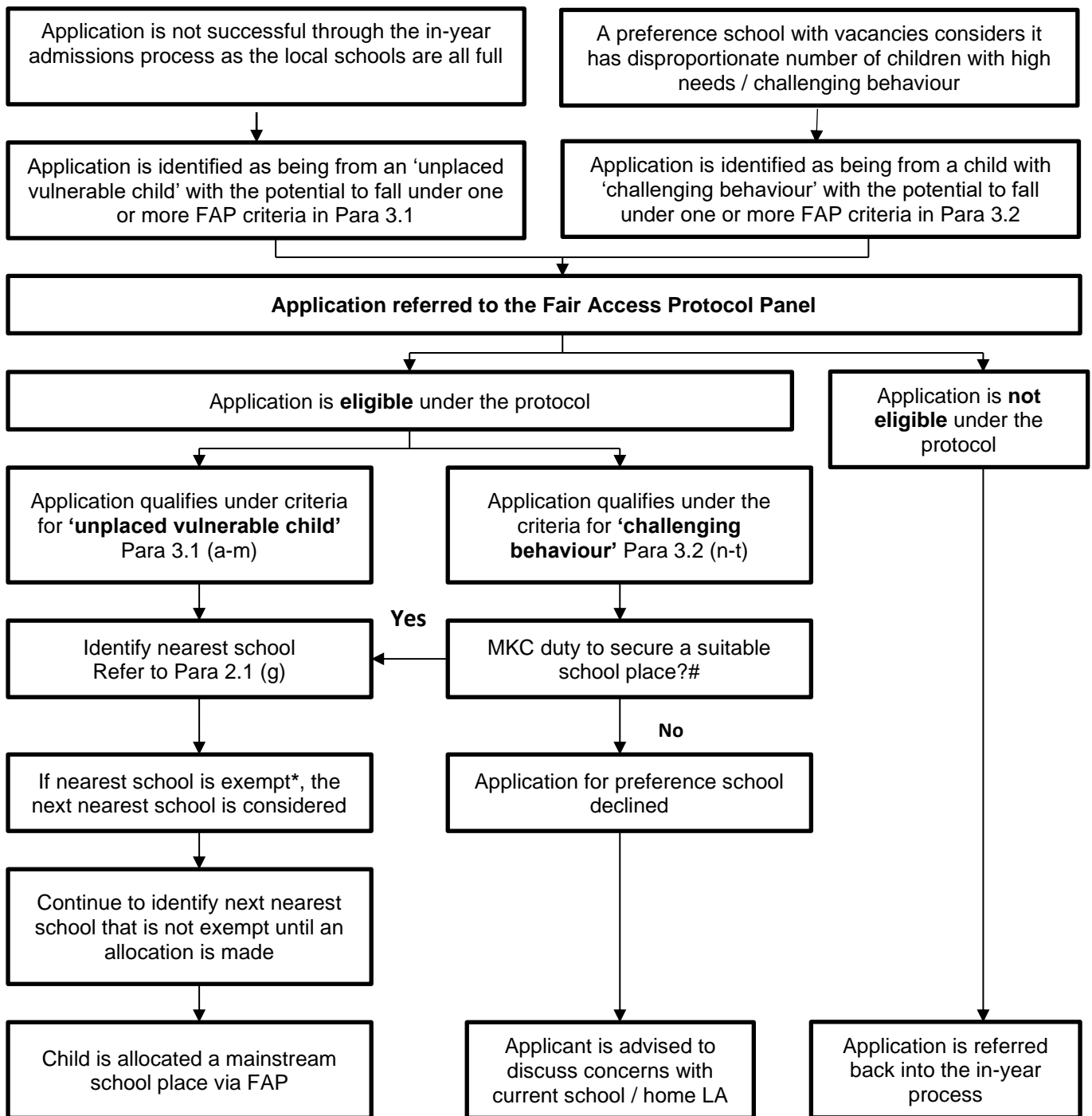
- 6.1 This Protocol will be in force with effect from September 2021 and will be reviewed in autumn 2022 or sooner if required.

## 7. Definitions

Term	Definition
Looked After Child	<p>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")</p>
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 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.</p> <p>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 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	<p>A place in a mainstream primary school, which is located within statutory walking distance of the young person's principle address.</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.