

# **Calderdale Council**

Secondary School

Fair Access Protocol (FAP)

## **Terms of Reference – September 2022**

### **1. Introduction**

- 1.1. Each local authority must have a Fair Access Protocol to ensure that unplaced and vulnerable children, and those who are having difficulty securing a school place in-year are allocated a school place as quickly as possible.
- 1.2. This Protocol outlines the process by which admission to an appropriate educational setting will be secured for children with challenging behaviour or who are hard to place (as defined within the School Admissions Code and reflected within this protocol).
- 1.3. Referral to the Fair Access Protocol should be seen as the last resort to secure a school place for a child.

### **2. Remit of the Fair Access Panel**

- 2.1. The Calderdale Fair Access Panel has been established as part of the Fair Access Protocol. The Panel will receive in-year applications referred by secondary schools or the Local Authority where, having considered the in-year application, the school is unable to admit and considers it to meet the criteria for fair access under the Calderdale Fair Access Protocol.
- 2.2. The Fair Access Panel role is to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a place in-year, are allocated a school place as quickly as possible.
- 2.3. In fulfilling its role, the Panel should also ensure that no school 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.

### **3. Role and operation of a Fair Access Panel**

- 3.1. Upon receipt of an in-year application, an admission authority must not refuse to admit a child to the school on the basis that they would be, or believe they would be, eligible to be placed via the FAP. The application must be processed in accordance with the usual in-year process.
- 3.2. When a school declines to admit a pupil requesting an in-year place, but that pupil meets one of the criteria specified under Fair Access (see appendix 1), the school must refer that application to the Fair Access Panel, stating which of the criteria they consider apply, and provide detail of what consideration

they have given to that application as well as their reason for not admitting outside of the Fair Access Protocol.

3.3. The Fair Access Panel is part of the Fair Access partnership between all local admission authorities. Decisions on the placement of children by the Panel should therefore be made in this partnership approach and considering:

- The needs of the child in question: children eligible to be placed via FAPs are often vulnerable and may have additional needs that require support. The Panel should therefore consider which school might best be able to meet and support those needs.
- The home to school journey distance and whether the child can access a school that is not in their immediate locality.
- The views of the school/s concerned: All schools should be treated in a fair, equitable and consistent manner. This means that no school is asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are otherwise being placed via the Panel.
- The number of Fair Access pupils that schools have admitted ensuring there is an even distribution of these pupils across all schools in the area.
- The number and proportion of pupils already admitted who have been permanently excluded from other schools.
- The number of vulnerable pupils already on roll at the school (SEN/CLA/CIN/CP). The Panel should distribute places equitably, seeking not to place the most vulnerable/challenging pupils in the most vulnerable schools.
- Where a child is returning to mainstream education from Elective Home Education (EHE) and meets the criteria for Fair Access, the panel will consider a return to the school they previously attended, providing it remains reasonable and accessible from the home address.
- FAPs must not require schools to automatically admit a child in place of another child permanently excluded from the school. Where a school expresses compelling reasons for not being able to admit a child via the FAP, this should be taken into consideration before a decision is made to place a child in that school.

- Parental preference: There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the FAP but parents' views should be taken into account. Information from a parent can provide valuable context that may help those involved in the FAP process determine whether a particular school place is appropriate for a child, and any needs they may have.

3.4. The Protocol may require schools to admit pupils above their Published Admission Number (PAN) and ahead of pupils on their waiting list or those awaiting an appeal. Section 2.15 of the School Admissions Code outlines that looked after children, previously looked after children, and those allocated a place at the school in accordance with Fair Access Protocols, must take precedence over those on a waiting list.

3.5. Admission authorities must admit children when asked to do so in accordance with the FAP. Where an admission authority fails to comply with the FAP, this will be raised with the CEO and Partnership Board. They may also be directed to admit via referral to the RSC office and/or Secretary of State.

#### **4. Timelines**

4.1. If refusing to offer a place, but the school believes the application meets the criteria for consideration under the FAP, the school should advise the LA Admissions Team by completing the referral form as soon as possible but by no later than 15 school days.

4.2. Where it has been agreed that an in-year application can be considered under the Fair Access Protocol, the place must be allocated for that child within 20 school days. Once allocated, arrangements must be made for the child to be put on roll and to start at the school as soon as possible.

#### **5. Composition of the Secondary Fair Access Panel**

- Assistant Director for Education and Inclusion (Chair).
- Three headteachers (or nominated representative) from a Calderdale secondary school.
- Local Authority Officers (as appropriate) from: Admissions, Inclusion/Education Welfare, Virtual School Team, Special Educational Needs Team, Early Help/Social Care.
- Other officers/agencies to be invited to attend as appropriate (e.g., Youth Justice Health, Police).

5.1. The meeting shall be quorate with three officers and at least one head teacher present.

5.2. If an agreement cannot be reached the Chair will have the deciding vote.

## **6. Reporting**

6.1. The minutes of the meeting shall be distributed to those in attendance. Minutes will include data on which schools have admitted pupils through the FAP as well as schools that have referred cases to the FAP for consideration. An annual report will be provided to summarise referrals and decisions across an academic year.

## **7. Reviewing the Protocol**

7.1. Minor technical changes to the Protocol may be agreed by a majority vote of the membership.

7.2. Significant and material changes must be made with the approval of the majority of schools following consultation.

7.3. In the event that the majority of schools can no longer support the principles and approach of their local Fair Access Protocol, they should initiate a review with the Local Authority.

7.4. A full review will be carried out if the Local Authority receives a request from CASH where there has been a majority vote reflecting the scenario in paragraph 7.3 above.

**Pupils who may be considered under the Protocol**

- 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;
- children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- children from the criminal justice system;
- 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;
- children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;
- children who are carers;
- children who are homeless;
- children in formal kinship care arrangements;
- children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- children who have been refused a school place on the grounds of their challenging behaviour and referred to the Protocol in accordance with paragraph 3.10 of the School Admissions Code 2021;
- children for whom a place has not been sought due to exceptional circumstances;
- 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
- previously looked after children for whom the local authority has been unable to promptly secure a school place

## Appendix 2

### **Children who have been Permanently Excluded**

- Children who have been permanently excluded have 15 days to appeal against exclusion. Where an appeal against exclusion is upheld then the pupil will return to their existing school or may request an in-year transfer. An in-year request would not be considered as fair access in this scenario, unless other criteria outlined within this protocol applied.
- Alternative provision will be offered to children who have been permanently excluded from two or more schools or for those deemed not suitable for mainstream. The Local Authority will determine the appropriate provision and period for which that provision will be provided.
- Where pupils are considered suitable for reintegration into mainstream provision, a referral form will be completed by the exclusions officer or Whitley Alternative Provision Academy and these cases will be brought to the Fair Access Panel and an appropriate school will be identified. These offers will be considered and recorded as Fair Access.
- The Whitley Alternative Provision Academy will liaise with identified schools regarding the reintegration process.

### **Children for whom mainstream education is not yet possible**

- Where a Fair Access Panel considers that a child is not yet ready for mainstream provision, based on the information provided, they will allocate a school roll and consider which alternative provisions are best able to enhance the pupil's readiness to learn and enable their reintegration into a mainstream setting as soon as practicable and appropriate. The allocated school is responsible for securing appropriate full-time educational provision for the child.

### **Challenging Behaviour**

- As per section 3.10 of the School Admissions Code, where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour, it may refuse admission and refer the child to the Fair Access Protocol.
- An admission authority should only rely on the provision in paragraph 3.10 if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.
- The provision in paragraph 3.10 cannot be used to refuse admission to looked after children, previously looked after children; and children who have Education, Health and Care Plans naming the school in question.
- Admission authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.
- Behaviour can be described 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. We would expect this behaviour to significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.
- A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act. Admission authorities should also consider the effect of the decision of the Upper Tribunal in *C & C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party) (SEN) [2018] UKUT 269 (AAC)* about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.
- For a child to be referred to the fair access panel due to challenging behaviour we would expect a number of the behaviours below to be evidenced by the school making the referral: -

- Regularly defiant
- Discriminatory and insulting to staff and/or peers
- Fixed term exclusions have had no impact on behaviour
- Bullying and intimidation of others
- Homophobic and/or racist language/attitudes
- Destructive relationships with many staff and peers
- Involved in gangs or negative associations inside/outside school
- Risky behaviours including possibly; alcohol, drugs, sexual activity or anti-social behaviour outside school
- Established patterns of rule breaking
- Openly challenges authority and disrupts learning of others
- Appears totally disengaged from learning

**In Year Process Flowchart**

Application received by LA and shared with school(s) preferred			
Does the school have vacancies?			
Yes ↓		No ↓	
Does the school have reason to believe the child may display challenging behaviour in line with section 3.10 of the school admissions code?		Does the school or LA have reason to believe the child might qualify for FAP consideration?	
No ↓		Yes ↓	
Place Offered (applying oversubscription criteria where necessary)	No ←	Can it be clearly demonstrated that the admission of the pupil would present prejudice to the efficient provision of education or use of resources?	Yes ←      No ↓
		Yes ↓	Can it be clearly demonstrated that the admission of the pupil would present prejudice to the efficient provision of education or user of resources?
Refer to LA as a potential Fair Access pupil. Place refused and appeal offered.			Yes ↓      No ↓
		Place refused and appeal offered. If pupil is out of school refer to LA for Fair Access consideration.	Place Offered (applying oversubscription criteria where necessary)