

# WESTMINSTER CITY COUNCIL

## IN YEAR PRIMARY FAIR ACCESS PROTOCOL

**Reviewed: January 2022**



City of Westminster

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### IN YEAR FAIR ACCESS PROTOCOL FOR PRIMARY SCHOOLS

#### 1. Introduction

- 1.1 The School Admissions Code 2021 requires local authorities to have a Fair Access Protocol in place which ensures that access to education is secured quickly for children who have no school place and that all schools in an area admit their fair share of the most vulnerable children, including those whose behaviour has been challenging. All schools *must*<sup>1</sup> agree and participate in the Fair Access Protocol and will be expected to admit children above their published admissions number if the school is already full<sup>2</sup>.
- 1.2 The Admissions Team would normally be the first point of contact for parents/carers resident in the Westminster City Council (WCC) seeking a school place for their child. In the majority of cases, children will be allocated a school place in accordance with normal coordinated in-year admission procedures as set out in para. 5.
- 1.3 This Protocol will apply to applicant children resident in WCC and is the mechanism for the placement of the minority of children where the normal procedures for in-year admissions would not be straight forward due to an identified high level of presenting need. **The protocol does not apply to applications made in the managed round (first point of entry to reception).**
- 1.4 If children applying to WCC schools from another LA and are considered to meet the threshold for placements under the WCC Protocol, the case will be referred to the home borough to implement their own In Year Fair Access Protocol.

#### 2. The local context

- 2.1 The purpose of Fair Access Protocols is to ensure that - outside the normal admissions round - unplaced children, especially the most vulnerable, are found and offered a place quickly, so that the amount of time any child is out of school is kept to the minimum. Every local authority is required to have in place a Fair Access Protocol, developed in partnership with local schools. It is for each LA to set out the principles and processes of their Fair Access Protocol in agreement with schools and that its objective is to operate effectively at a local level.
- 2.2 WCC currently has sufficient capacity across all year groups and is able to offer schools places to children new to the area, even though it may not be a school of choice. The Protocol is therefore not required for this purpose.
- 2.3 The Protocol is reviewed annually and any changes to the local context will be taken into account.
- 2.4 The local context requires that this LAs protocol will provide a clear, fair, and transparent process to enable the placement of children identified as being vulnerable and/or having a high level of need but do not have an Education, Health & Care (EHC) plan in place.

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<sup>1</sup> The word *must* represent mandatory requirements of the Admissions Code.

<sup>2</sup> Does not apply to infant year groups where classes would exceed 30.

### 3. Scope of the Fair Access Protocol

3.1 The aims of the Protocol are to:

- To be fair and transparent and have the confidence of schools;
- To ensure that children identified for a Fair Access Placement are offered education provision appropriate to the child and their needs as quickly as possible;
- To ensure excluded children, and children in alternative provision, return to mainstream school as quickly as possible where it has been assessed as appropriate by the Alternative Provision provider;
- To ensure that all schools in the area, including those that may not have places available admit their fair share of children who have had behavioural difficulties;
- To ensure that the LA will use provision so that the needs of pupils who are not ready for mainstream schooling are met;
- To ensure that children who are more vulnerable to missing education, which may in turn impact on their welfare, health and safety, wellbeing and educational opportunity are placed in a school as quickly as possible.

### 4. Children to be included in the protocol

4.1 Taking account of the above aims and the local context, the following groups of children will be included in this protocol:

- Children newly arrived to the area presenting with a high level of need but do not have an EHC plan in place but supporting information indicates he/she will need an EHC assessment.
- Children newly arrived to the area presenting a high level of need with a statement of need that has been issued outside of the UK.
- Permanently excluded pupils requiring reintegration to mainstream from Alternative Provision
- Children who are carers or children with unsupportive family backgrounds for whom a place has not been sought.
- Children identified via the operational Vulnerable Children's Collaborative Group.
- Other hard to place pupils (as determined and agreed by Senior Admissions Managers in liaison with senior SEN Managers).

### 4.2 Children not included in the protocol

In accordance with 3.12 of the Code, the provision of Fair Access will not apply to a looked after child<sup>3</sup>, or a child with a EHC plan that names the school in question, as these children **must** be admitted to the school named.

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<sup>3</sup> (DfE Admissions Code): 'In most cases use of the Fair Access Protocol should be unnecessary for a previously looked after child. We would expect the local authority to aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this. The local authority may consider swift use of their general powers of direction (under paragraphs 3.26-3.28) or asking the Secretary of State to consider a direction (under paragraph 3.29) to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with an admission authority promptly.'

## 5. Process for In-Year coordination

- 5.1 Each LA will have an agreed scheme in place that sets out how applications made for schools outside of the normal admission round are processed. Local arrangements in WCC are set out in the '*Bi-borough In-year coordinated Scheme*'. The majority of primary schools in WCC fully participate in coordination.
- 5.2 Those few schools that accept applications direct are still required to provide the LA with the details of offers made, and their vacancies in each year group whenever this information is requested, and within 2 school days following receipt of request.
- 5.3 The operation of Fair Access Protocols is outside the arrangements of coordination and is triggered when it has been determined that a school placement cannot be made under the in-year admission procedures.

## 6. Legislation that applies to admissions

- 6.1 In order to consider the criteria to trigger a Fair Access placement, legislation that applies to admissions must firstly be taken into account. As set out in guidance issued by the DfE (September 2021) Fair Access Protocols must not be used as a means to circumvent the normal in-year admissions process.
- 6.2 All schools are highly experienced in dealing with children that may present a specific need, whether that be medical, physical, educational, emotional and/or behavioural. The majority of primary in-year applications are processed quickly, and children are placed in a school within 5 school days, including those with a specific need. Referrals for a Fair Access Placement will only apply to applicants that are considered to have a high level of need.
- 6.3 The following statutory requirements that apply to all schools must be taken into account before a decision is made to consider for a Fair Access Placement:
  - The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied. All children whose Education, Health and Care (EHC) plan names the school **must** be admitted. **If the school is not oversubscribed, all applicants must be offered a place (Code para 1.6).**
  - Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, must take precedence over those on a waiting list (Code para 2.15).
  - The operation of Fair Access Protocols is outside the arrangements of coordination and is triggered when a parent of an eligible child has not secured a school place under in-year admission procedures (Code para 3.17).
  - 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 (Code para 3.13).

## 7. Mechanisms for referrals

- 7.1 The majority of primary in-year applications are processed quickly and are placed in a school within 5 school days. The number of cases presented that may need to be considered for a fair access placement will be low and would not be expected to be more than five to ten in any one year (based on data for the last two years).
- 7.2 The Admissions team is the first point of contact for in-year applications. A high majority of in-year admissions are new arrivals to the area and many from abroad and will not be knowledgeable of the school or the system for applying. Parents will be advised on schools to apply for with vacancies in order to secure a place quickly. This information will be provided with or without the knowledge of needs the child may present.
- 7.3 Each in-year application is processed in the normal way and the applicant's details will be sent to the schools applied for with any additional information provided also passed onto the respective school(s). Information provided by the parent /carer on the form will in most cases highlight the need to seek further details. It may also be the case that no information is provided by the parent, and it only becomes apparent that there is a high level of need when the school offered meet with the parent and child.
- 7.4 **The Admissions Team (senior managers) will determine the cases to be considered for a Fair Access placement.** Depending on the circumstances of the case, decisions will be made in liaison and with input and support from senior managers in the SEN Team using mechanisms already in place. Where appropriate, advice will be sought from social workers, Early Help managers and other senior officers and professionals that may be involved in the case.
- 7.5 Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place must be allocated for that child within 20 school days (Code para 3.21).
- 7.6 **School referrals** - where a Governing Body does not wish to admit a child with challenging behaviour, even though places are available, it **must** refer the case to the Admission Team for consideration for a Fair Access placement. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children in the requested year group. This provision will not apply to a looked after child, a previously looked after child or a child with an Education, Health and Care Plan naming the school in question, as these children **must** be admitted.

## 8. Coordinated virtual placement process

Once it is agreed that a child's placement must be decided in accordance with the Fair Access Protocol, the following process will apply:

### Step 1 – Notifying the parent/carers

The parent/carer will be informed that their case meets the criteria for a Fair Access Placement, and they will be asked to name three primary schools (if they haven't done so already). If the parent has not indicated faith schools/or has only indicated faith schools, they will be contacted to determine any strong reasons for their preferences.



### Step 2 – Identifying schools

The admissions team will also identify the three closest primary schools, which may or may not be the same as the parents preferred schools. If the child is of Reception, Year 1 or 2 age only schools with vacancies will be named. Faith schools will be included, depending on the outcome of Step 1. Any school previously attended will not be named if there are legitimate reasons why it would not be appropriate to do so. Schools that have a Requiring Improvement or Inadequate Ofsted rating will not be included.



### Step 3 – Notifying schools

The three named closest schools, and any additional schools named by the parent that are not included, will be contacted by email as a formal Fair Access Placement request and sent the PA2 form to complete. The email will be for the Head teacher attention with all schools included in the request. The email will be password protected as it will contain all the known information that has been provided.

Each school will be expected to respond with a decision on the placement within **7 school days and to be returned by the Head teacher or on the Head teacher's behalf.**

All schools (including Academies) should work together collaboratively, taking into account the needs of the child as well as those of the school.



### Step 4 - Returning a decision

On receipt of all responses, if more than one school agrees to a placement, highest priority will be given to the school that is indicated as a parental preference.

If a decision is returned not to agree the placement the information provided by the school will be shared with all recipients when the decision to name a school is finalised. If there are no agreements for the placement, the scoring system will be applied as detailed in the next step. **The school with the highest recorded score will be required to admit.**

**The final placement decision is binding on the parent/carer and school.**

**Note:** Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, must take precedence over those on a waiting list (*Code para 2.15*).



Scoring system to assign the named school					
Has the school already admitted a child under fair access into the specific class.	Yes - score 0		No - score 8		
Has school already admitted a child under fair access.	Current academic year	Last 3 years		Not taken a child in the last three years	
	Score - 0	Score - 4		Score - 8	
Has school taken a child with an existing EHC plan <b>new</b> to the area admitted via the SEN consultation process.	Current academic year	Last 3 years		Not taken a child in last 3 years	
	Score - 0	Score - 4		Score - 8	
Circumstances of particular class subject to consultation –  Taking account of	Class in highest quarter for % of children with an EHC Plan or an EHC request outstanding  With more than 1 child with an EHC in	Class in highest quarter for % of children with an EHC Plan or an EHC request outstanding  With at least 1 child with	Class in 2 <sup>nd</sup> quarter for % of children with an EHC Plan or an EHC request outstanding	Class in 3 <sup>rd</sup> quarter for % of children with an EHC Plan or an EHC request outstanding	Class in lowest quarter for % of children with an EHC Plan or an EHC request outstanding

	class that would be required to admit	an EHC in the class			
	Score - 0	Score - 2	Score - 4	Score - 6	Score-8
<p>Circumstances of particular school. Looking at data above and using</p> <ul style="list-style-type: none"> <li>% of children with an EHC or an outstanding request for an EHC in the school.</li> </ul> <p>Only taking account of year Reception to Year 6 on school main roll.</p>	<p>School in highest quarter for % of children with an EHC Plan or an EHC request outstanding</p> <p>Score - 0</p>	<p>School in 2nd quarter for % of children with an EHC Plan or an EHC request outstanding.</p> <p>Score - 2</p>	<p>School in 3<sup>rd</sup> quarter for % of children with an EHC Plan or an EHC request outstanding.</p> <p>Score - 4</p>	<p>School in lowest quarter for % of children with an EHC Plan or an EHC request outstanding.</p> <p>Score - 6</p>	
School Proximity	<p>Furthest 2 schools</p> <p>Score - 2</p>	<p>Schools ranked 3<sup>rd</sup> and 4<sup>th</sup> on distance.</p> <p>Score - 4</p>	<p>Nearest 2 schools</p> <p>Score - 6</p>		
Sibling connection	<p>Sibling(s) already on roll</p> <p>Score - 6</p>	<p>Sibling(s) in process of being placed as can be offered</p> <p>Score - 4</p>	<p>No sibling connection</p> <p>Score - 2</p>		
Parental Choice	<p>Not chosen by parent</p> <p>Score - 0</p>	<p>Chosen by parent not ranked in first 2 schools of choice</p> <p>Score - 2</p>	<p>One of parental first two choices</p> <p>Score - 4</p>		
<p>School eligibility for class – size restricted consultations (only applicable years 3 -6)</p> <p>Score will take account of those schools not eligible for consideration in year rec to year 2 because all classes are full with 30 children.</p>	<p>Yes - score 0</p>		<p>No – score 2</p>		



### **Step 5 - Notifying the decision**

The final placement decision will be circulated by email to all recipients. The school is to respond to confirm the placement in a timely manner to ensure a school place is allocated **within 20 school days** of the Fair Access consultation having commenced.

The parent/carer will be informed by the admissions team of the school to be allocated. The expectation is the school will contact the parent/carer to arrange for the child to be on roll within **5 school days**.

If the parent of the child refuses/declines to send their child to the allocated school, the parent will be considered to be failing in their duty to ensure that their child is receiving a full-time education and the case will be referred for School Attendance proceedings.

**Note:** The parent retains the right to appeal against the decision not to offer any of the preferred schools.

## **9. Resolving differences of opinion**

- 9.1 The purpose of this protocol is to ensure that children who are vulnerable are placed in provision as quickly as possible and that there is a fair and transparent decision-making process. The scoring system provides this in the event all schools indicate they are not able to admit the child.

The priority is for the child to be in receipt of education with minimal delay. Any refusal to admit a child after following all due process, must only be if one or both of the following reasons apply:

- The School believe, and can evidence, that to admit the child would be so detrimental that it would prejudice the provision of efficient education for other children.
- The School believes that child has such significant presenting needs that a mainstream school setting is impracticable – school would need to be able to demonstrate reasonable adjustments had been considered.

- 9.2 In the event of the above, the Director for Education (or a senior officer nominated for this purpose) will review the case with a representative of the Primary Heads Consultative and the school prior to any consideration of a formal direction. However, in the case of a community school it cannot refuse to admit a pupil if requested by its own admissions authority.

- 9.3 The LA may direct the admission authority for any maintained school in its area for which the local authority is not the admissions authority to admit a child even when the school is full if a child has been refused entry to or has been permanently excluded from every suitable school in a reasonable distance. If the LA is minded to direct, then before doing so it will consult the relevant parties, and then notify the Governing Body and Head teacher of any decision to direct. The direction may only be issued after 15 days have passed from service of its notice and the case has not been referred by the Governing Body to the Schools Adjudicator. The governing body of a maintained school may appeal a local authority's decision to direct the admission of a child in accordance with a locally agreed protocol by referring to the Schools Adjudicator within the 15-day period and informing the LA. The Adjudicator then determines which school is to be required to admit the child and the decision is binding.

- 9.4 Should an Academy refuse to admit a child in accordance with the protocol, the local authority will refer the matter to the Secretary of State for consideration who may subsequently make a direction.

## **10. Fair Access Placement Funding**

Short term Fair Access funding is to enable the achievement of specified outcomes for an individual child. When a child or young person is placed through the Fair Access Process, £3,000 will be made available to facilitate transition into mainstream education. This funding will be made available once the child is confirmed on roll of the school.

## **11. Children that may not be ready for mainstream schooling**

- 11.1 Where a school, parent or LA considers an unplaced child for whom an application for a place at a school has been made, may not be ready for mainstream school the case will be dealt with by the Admissions Team in liaison with the appropriate professionals.
- 11.2 A child or young person is considered not ready for mainstream school include any who:
- a. has a high level of need that has been assessed as requiring a placement in specialist provision.
  - b. is placed in alternative provision who consider the child is not ready for re-integration into mainstream schooling
  - c. is unable to attend school for medical reasons and has a letter from a consultant confirming the reasons s/he is unable to attend school
  - d. has a behaviour record which indicates that s/he currently poses a serious risk to the health, safety or welfare of staff and students in any mainstream school.