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Royal Borough  
of Windsor &  
Maidenhead

# **Fair access protocol for schools in the Royal Borough of Windsor and Maidenhead**



**achieving  
for children**

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All schools in the Royal Borough of Windsor and Maidenhead (RBWM) share a collective responsibility for children and young people living in the borough and have a shared aim of improving the attainment of our vulnerable children and young people. This Fair Access Protocol (FAP) ensures that any child without a school place resumes their education in a suitable setting with the minimum delay so that they are able to benefit fully from the educational opportunities available in the borough.

The Fair Access Protocol must not be used in place of the usual in-year admissions process. A parent can make an in-year application at any time and is entitled to have their preference met wherever possible, as well as the opportunity to appeal a decision when a place is not offered.

Fair access aims to ensure that no school, including those with places available should be 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.

Fair access referrals should be sent to the AfC RBWM Admissions team and the inclusion and access officer, providing a clear reason for the referral, a copy of the in-year admissions outcome letter and parent or carer right to an appeal.

The inclusion and access officer and Admissions team will review all fair access referrals and determine if the application meets the criteria outlined within this protocol. At the point that it has been agreed by RBWM admissions and the inclusion and access officer that a referral meets the fair access criteria, the child **must** be allocated a place within 20 school days.

## 1. Principles

- All schools will endeavour to equally share the challenges of meeting the needs of the vulnerable children and young people in RBWM.
- The process of allocating vulnerable children and young people to schools will be transparent, fair and consistent.
- The support and placements agreed, and their outcomes will be monitored by the fair access panels and the data made available to all.
- All schools in the borough including academies and free schools will adhere to the protocol.
- The panel will establish the education provision a child will receive and identify a school place.

## 2. Children and young people covered by the Fair Access Protocol

Children and young people from the following groups, resident in RBWM, who have difficulty securing a place via the in-year admissions.

- **(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 Fair Access Protocol.**
- **(b) Children living in a refuge or in other relevant accommodation at the point of being referred to the FAP.**
- **(c) Children from the criminal justice system**

Children from the criminal justice system or attending pupil referral units who are ready to be reintegrated back into mainstream education will automatically be referred to the Fair Access Panel to identify a suitable placement. In such cases, the panel will be provided with a risk assessment in addition to the standard information to help them make a decision about whether mainstream schooling is a suitable option. The Youth Offending Team will ensure a fully completed 'in-year' application form is submitted by the parent or carer and co-signed by the Youth Offending Team worker at least 10 days prior to the child's return home. All pupils returning from the criminal justice system will have suitable educational provision identified and a place reserved by the Fair Access Panel in advance of their return to their home.

- **(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**

Children identified by Social Care as formal 'carers' will be considered under this protocol and their placements will be included in the figures. Self-identified carers will not be considered without confirmation of their carer status from Social Care or Family Action who support young carers in RBWM.

- **(g) Children who are homeless**

For admissions purposes only children who family meet the statutory definition of homeless and who RBWM Social Care identify as needing additional support with a school placement will be referred to the Fair Access Panel. All other homeless children will be placed under the standard admissions processes.

A statutory definition of homelessness can be found: Part VII of the Housing Act 1996, as amended by the Homelessness Act 2002, sets out the duties owed by English local housing authorities to someone who is homeless or threatened with homelessness and the Homeless Person Reduction Act 2017.

- **(h) Children in formal kinship care arrangements.**

- **(i) Children of, or who are, Gypsies, Roma, Travellers, refugees and asylum seekers**

For admissions purposes, these are defined by RBWM as children who have lived in a mobile home, traveller housing or caravan for the last two years and whose families are planning to continue to do so for at least a further 12 months from the point of application. Group considered under this element of the protocol are: Irish Travellers, Scottish or Welsh Travellers, Roma people (including British Romany Gypsies), New Age Travellers, travelling show people, to ensure these are admitted to school with the minimum of delay and to maximise what may be a short term period of education.

- **(j) Children who have been refused a school place on the grounds of their challenging behaviour and referred to the FAP in accordance with paragraph 3.10 of the code.**
- **(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 this has not been accepted.**
- **(m) Previously looked after children for whom the local authority has been unable to promptly secure a school place**

For the purposes of school admissions and fair access, previously looked after children are children who were looked after but ceased to be so because they were adopted or became subject to a child arrangement order or special guardianship order. All references to previously looked after children in the Admissions Code 2021 mean children who were adopted or subject to 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. Looked after children cannot be considered under fair access and will not be discussed at the panel unless they are permanently excluded.

This list is not exhaustive.

- **Clinically extremely vulnerable children**

During the COVID-19 outbreak, some parents of children who are clinically extremely vulnerable decided to electively home educate their child. Where a parent decides they want their child to return to school and apply for a school place, applications should be processed in accordance with the in-year admissions process. Most children should secure a school place this way. For children with medical conditions who are experiencing difficulties, RBWM fair access panel should be aware that those children with medical conditions qualify to be allocated a school place via the FAP under category (e) above. Other children in this situation may also qualify to be placed via the FAP under category (i) above.

- **Twice excluded rule**

As in the normal admissions round, where an RBWM school receives an in-year application for a year group that is a normal point of entry (Reception or Year 7), they must not refuse to admit the child on the basis of their behaviour, unless the child has been permanently excluded from two or more schools, with the most recent exclusion being within the previous two years. The twice excluded rule does not apply to the following children.

- Children who were below compulsory school age at the time of the exclusion.
- Children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so).
- Children whose permanent exclusion has been considered by a review panel, and the panel has decided to quash a decision not to reinstate them following the exclusion.
- Children with education, health and care plans naming the school.

- **Challenging behaviour**

Where an admission authority in RBWM 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 (but they have not met the threshold for the twice excluded rule), it may refuse admission and refer the child to the FAP. Admission authorities may only do this if:

- the school has a particularly high proportion of children with challenging behaviour or previously excluded pupils on roll in comparison to other schools
- it believes admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources

The following reasons on their own should not be grounds for considering that a child may display challenging behaviour:

- poor attendance elsewhere
- a defined number of suspensions, without consideration of the grounds on which they were made
- special educational needs
- having a disability

- **Cross local authority borders**

If a child meets the fair access criteria and resides in a neighbouring borough, the fair access referral should be sent to that authority's Fair Access Panel.

Under very exceptional circumstances, where a multi-agency risk assessment demonstrates that for safeguarding reasons it is not appropriate for a young person to attend a school in the local authority in which the child resides in, the inclusion and access officer will consult with neighbouring boroughs. Cross border allocations will only be considered under extenuating circumstances.

- **Permanent exclusions**

The RBWM Fair Access Panel will work in partnership with the headteacher of the RBWM alternative provision provider following a child being permanently excluded from school. Where it is recognised by professionals that a child is ready to reintegrate to a mainstream school following a permanent exclusion, the headteacher of the alternative provision and/or the inclusion and access manager will refer the young person to the fair access panel. The panel will decide which school in RBWM would be the most suitable provision and discuss if any additional support is required for the reintegration to be successful.

- **Alternative provision**

Where a child who falls within the fair access criteria and it is not felt by professionals that the young person is ready to reintegrate to mainstream education, alternative provision will be identified by the local authority. The local authority may also be requested to facilitate a bespoke 'managed move' with specific caveats such as a short time frame.

### **3. Fair access panels**

Children and young people who fall under this Fair Access Protocol are placed by one of four fair access panels (one secondary panel and three area-based primary panels). Their membership and meeting frequencies are as follows.

#### **Secondary panel**

- A panel consisting of all secondary representatives within the local authority to pass decisions on allocations. School representatives and local authority officers will meet monthly with the exception of August. Middle school headteachers will attend when children in Years 7 and 8 are being discussed. A quorum of six schools is necessary for decisions to be made.
- The panel will be chaired by an independent chair, or an agreed suitable replacement in their absence.

#### **Area primary panels**

- Three panels (one each for Ascot, Maidenhead and Windsor) will consist of all primary headteachers from the area, together with professionals relevant to the children being considered. Unresolved fair access cases would be discussed within the primary fair access meetings if telephone contact or emailed fair access case notes have failed to secure a place.
- These panels will be chaired by an independent Chair, or an identified suitable replacement in their absence.
- Where cases need to be considered between meetings, a FAP1 form and supporting documents will be emailed and telephone conversations between the inclusion and access manager and headteachers will take place.

Where these discussions have not led to an allocation, a panel will be called and the relevant professionals will meet accordingly. There will need to be a quorate of at least four headteachers or representatives attending with the authority to pass a decision on school allocation.

## **4. Processes for a child being considered by the panel under fair access**

### **Referrals**

#### **Step 1:**

#### **Application is made via the RBWM Admissions team or a school's own admitting authority**

- An in-year application is made by a parent and the admitting authority feels that it meets the fair access criteria. This may include applications received by schools who are their own admitting authority and have referred to fair access via the RBWM Admissions team and inclusion & access officer.
- A headteacher, governing body, trustees or a professional outside school feels that a case meets the criteria set out in Section 2 above and contacts the RBWM Admissions team and inclusion and access officer. If the parent has not completed an in-year application form, a professional may do so on behalf of the parent

Note: On receipt of an in-year application, the admission authority, or the local authority if it is coordinating the admissions authority's in-year admissions, should aim to notify the parents of the outcome of their application in writing within 10 school days, but they must be notified in writing within 15 school days.

#### **Step 2:**

#### **Passing an in-year transfer application to the RBWM Admissions team**

- If the application is for a child who has moved into the Royal Borough of Windsor and Maidenhead who is not considered vulnerable and there is a lack of school places within the particular catchment area, parents or carers will be directed to RBWM admissions who will advise the parents or carers to apply to as many schools as possible to increase the chance of a securing a school place. Because of the local geography of RBWM, there may be school places available in neighbouring local authorities that are as near or accessible for parents or carers to access as schools within RBWM. The Admissions team will support the applicant to secure a place as quickly as possible in accordance with the normal in-year admissions arrangements. If a parent or carer has applied to all schools within a reasonable distance (in and out of borough) and remains unable to secure a school place, the case will be referred to the fair access panel by RBWM Admissions.
- If the application is for a vulnerable child who meets the fair access criteria set out in Section 2 of the protocol, and a school place is not available or admission has been appropriately refused by a school with places (see Section 2 above), the RBWM Admissions team passes the referral to the inclusion and access officer.

### **Step 3:**

#### **The inclusion and access officer receives the in-year application form from the RBWM Admissions team**

- They compile relevant information from previous education provider(s), parents, and relevant professionals as appropriate, ensuring that parents are aware of the process and their rights. The information provided will include a profile of the pupil and details of their behaviours and needs over a period of time.

### **Step 4:**

#### **The inclusion and access officer summarises the information gathered and forwards to all headteachers in advance of the fair access panel meeting**

- The inclusion and access officer produces a FAP 1 document that outlines all the relevant information required by the schools. This is emailed out to Head teachers where possible, five days before the panel meeting.

### **Step 5:**

- Panel members review the information before the meeting and can contact the inclusion and access officer to ask for more information if necessary.

## **Consideration at the panel**

- The panel decides whether the case meets one of the fair access criteria in Section 2 above. If it does not, the case is referred back to the relevant admission authority to be processed as a regular in-year admission. If the panel feels it does meet the criteria, the panel proceeds to the next stage.
- The panel considers the case by taking into account the inclusion and access officer's FAP1 report and supporting evidence. Schools have agreed to trust colleagues in terms of sharing their cohort data, and in the event a decision is proving difficult to make, have agreed to use DfE and local authority data which is later discussed in this protocol. The panel also understands that a voting system may be used if necessary.
- The panel may decide to agree that funding will be allocated to support the child's integration into the new school, subject to a request being received and agreed upon by the panel.
- The panel will set a review date when they will receive a report on the child's progress in the new school and the use of any funding allocated.
- All discussions and decisions are recorded.

## **Implementing the panel's decision**

Note: In order that a child resumes their education as quickly as possible all parties involved will act with a sense of urgency in securing the school place.

- The inclusion and access officer contacts the relevant school and parents to convey the panel's decision and provide the school with all the information which has been submitted.

- If the panel has admitted a student already, and later submits a funding proposal, this will need to be agreed by panel members. In many cases a funding request will be submitted together with the fair access referral.
- The school will contact the parent and ensure that the child is admitted within five school days of the school receiving notification of the decision.
- It is anticipated that all fair access cases will be resolved by the panel during the scheduled meeting. As a last resort, the local authority can direct a school to admit a child, or request the Secretary of State to direct for academies.

Note: In very exceptional circumstances, a school may choose to admit an applicant who meets the fair access criteria prior to the scheduled fair access panel. In these circumstances, the headteacher will contact the inclusion and access manager to discuss the case and ensure it meets the fair access criteria. The inclusion and access manager will present the case at the next scheduled FAP and if the panel agrees that it meets the criteria, it will be logged as a fair access case.

### **Criteria for allocating a school under fair access**

In proposing a receiving school, the inclusion and access officer and the panel will adhere to the principles set out in Section 1 above, ensuring a fair, equitable and transparent distribution of children who meet the fair access criteria. School representatives have agreed to trust colleagues to share their relevant cohort data. In the event a decision regarding allocation is particularly difficult, the panel have agreed to use specific DfE data that would be used in the event of a request for the Secretary of State to direct, and additional data such as:

- fair access allocations for the relevant cohort
- fair access allocations across the school
- distance from student's home to a school
- PAN, and number of pupils in the relevant year group
- previously permanently excluded pupils
- managed move allocations (See also Annex 3)

Other factors to consider when making an allocation are as follows.

- The parent's and child's preference (but there is no legal requirement under fair access to meet parental preference).
- Any reasons why it would not be appropriate for a child to attend a school in their own locality.
- Any exceptional reasons why a school might be particularly unsuitable, such as specialisms, religious affiliation or conflict in peer relationships.
- Infant class size and related excepted pupil regulations.

## **Rights of parents and carers**

- The RBWM fair access panel must not be used in place of the usual in-year admissions process.
- A parent can make an in-year application at any time and is entitled to have their preference met wherever possible, as well as the opportunity to appeal a decision when a place is not offered.
- The appeals process is independent from the FAP. Where a child has been referred to the FAP, their parents retain the right to make further in-year applications and appeal against the refusal of a school place as normal.
- Admission authorities should be aware that where they refuse a child a school place and subsequently refer them to the FAP, they may later be required to admit that child if an appeal is upheld. This would still be the case when an alternative school place is offered to the child via the FAP.
- In all circumstances, the decision of an appeal panel is binding and must be complied with.
- The fact that an appeal has been lodged for a child is not a reason to delay the FAP process.
- The inclusion and access manager will notify the panel where an appeal has been lodged.

## **Funding and budgets**

It is recognised that a vulnerable child may require additional support, particularly in the transition phase as they settle into a new school and some funding is available to facilitate this support from the fair access budget. Approximately £40k a year is available for fair access cases (primary and secondary). The types of support which could be funded may include the following:

- additional catch up support such as for a Year 11 changing school or exam boards
- one-to-one support in or out of lessons including counselling, teaching and learning
- off-site provision
- additional equipment for children with significant medical needs without an education, health and care plan
- no additional funding will be provided to meet the costs normally covered by AWPU funding

If the panel decides that funding is appropriate in a particular case, the receiving school submits a funding request to the inclusion and access officer, setting out how additional funding would be used. This is then shared amongst the panel and agreed or not agreed accordingly.

There may be transport costs to consider. The borough has a statutory duty to pay for transport costs to the nearest available school where that school is more than the statutory travelling distance away. This would be funded from the local authority's home to school transport budget.

However, if the most appropriate school under fair access is not the nearest school with places there would be no statutory requirement to fund transport. In this situation, the inclusion and access officer will investigate whether it is possible for the home to school transport to be funded under the exceptional circumstances criteria and will include this in the information provided to the panel about the child in question.

### **Recording and monitoring of children's progress and outcomes, and of Fair Access and allocations**

- The inclusion and access officer will record all allocations made to the fair access panel, by school, year group and fair access criteria. This data will be made available to the panel on request. The inclusion and access officer will also inform the RBWM Admissions team of all fair access allocations.
- The inclusion and access officer will work collaboratively with the schools in order to gather updates, information and progress relating to all children considered by the Panels and report back at the next fair access panel meeting accordingly.
- Following a decision by the panel, the parent or carer will receive an offer letter from the Inclusion Service. A copy must be sent securely to the named provision, school or both where alternative provision precedes admission to the named school. In all cases where parental preference has not been met, the letter must include information regarding the parent's statutory right of an independent appeal for any preferred school where they have been refused a place. Section 94 of the SSFA 1998 states that parents (and in some circumstances children) may appeal against a decision to refuse admission to a school. The exception is where the pupil has been twice permanently excluded.

### **Annexes:**

- Legal basis for the Fair Access Protocol
- Fair access process flow chart
- Managed Move Protocol
- DfE School Admissions Code 2021
- DfE Fair Access Protocols Guidance 2021