

## **In-Year Admissions Fair Access Protocol 2022 - DRAFT**

### **1.0 Background**

- 1.1 The School Admissions Code sets out the mandatory requirements regarding the admissions process and makes clear that all local authorities and admission authorities are required to have a Fair Access Protocol, and that all schools and academies must participate in their local authority's protocol in order to ensure that children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. This includes admitting children above the published admission number to schools that are already full.
- 1.2 The School Admissions Code 2021 also makes clear that 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, under the Fair Access Protocol.

### **2.0 Aims of the Protocol**

- 2.1 The protocol is designed to:
  - a. acknowledge the need for vulnerable young people who are seeking a school place to be dealt with quickly and sympathetically;
  - b. reduce the time that these pupils spend out of school;
  - c. ensure that schools admit pupils including those with challenging educational needs on a fair basis;
  - d. be fair and transparent, and to have the confidence of all schools;
  - e. ensure that all schools accept a fair and equitable share of pupils.

### **3.0 Main Principles**

The majority of pupils are already admitted to Wirral schools through the routine admissions procedures operated by the Mainstream Admissions team, and this will continue to be the case.

- Where schools have places, children should be admitted under the normal admissions procedures unless the requested school demonstrates that category 3.1(i) below applies and requests the case be considered under Fair Access.
- Where an application is made for a secondary school that has reached its admission number, in the majority of cases parents will be advised of alternative schools and the appeals procedure, unless the application falls into one of the Fair Access categories.

3.1 In order for this protocol to be successful:

a. **All schools will take part.**

b. There will be a single point of entry and a coordinated approach for all in-year admissions via the Mainstream Admissions team. These admissions include school to school transfers as well as those who are new to Wirral or the country. Schools who “opt-out” of in-year transfer co-ordination will continue to take part in the Wirral Fair Access Protocol.

c. The Fair Access protocol will apply to all school age pupils (4-16).

d. The protocol will only apply to those pupils who are ordinarily resident within Wirral Authority boundaries.

e. All schools subscribe to a ‘no walk-in’ admissions process.

f. **The protocol may require schools to admit pupils above their Published Admission Number (PAN) and ahead of pupils on their waiting list or awaiting an appeal.**

g. A Fair Access Panel shall make the decisions about placement in an open and transparent way.

h. The distribution of pupils across schools under the protocol shall be fair, with due recognition given to the circumstances of the school, the year group (including the school’s view on the impact on the provision of efficient education or the efficient use of resources), and circumstances of the individual.

i. Where a school does not wish to admit a child because they have good reason to believe the child may display **challenging behaviour** (as defined in 4.2 below) outside of the normal admissions round, even though there are places available, it can refer the case to the Authority for action under the Fair Access Protocol. **To avoid delay, concerns must be raised within 5 working days of receipt of the child’s application.**

A school should only refer a child to the Fair Access Protocol for this reason 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 efficient use of resources.

Schools cannot refuse admission to Looked After Children, previously Looked After Children or children with an Education Health and Care Plan naming the school, on the grounds of challenging behaviour.

j. Undersubscribed schools must not be required to admit a greater proportion of those children referred to a Fair Access Panel, particularly those schools with a recent history of challenging behaviour greater than that of other schools.

k. Schools must respond immediately to requests for admission so that the admission of the pupil is not unduly delayed.

l. For schools that are their own admissions authorities, Headteachers and Governors are requested to agree a procedure to empower a subcommittee comprising the Head in consultation with the Chair to make immediate decisions regarding admissions where there is a place available in the year group. Where the year group is full, the Admissions Committee should be convened as soon as possible so that the decision regarding admission can be made without delay.

m. Schools should not refuse to admit a child who has been denied a place by an Independent Appeal Panel, if the Fair Access Panel subsequently identifies that school as the one to admit the child. This could occur if the parental appeal to the Independent Appeal Panel takes place before the Fair Access Panel meets.

#### 4.0 Children Covered by the Protocol

It is a legal requirement that Looked After Children (LAC) and previously looked after children (as defined by the Admissions Code 2021) be given first priority for admission to all schools within their oversubscription criteria. **Any consideration of a school move for a child in care must be preceded by a PEP. The PEP should have representation from the existing school, social care and LACES.**

Children with an Education Health and Care Plan (EHCP) are not covered by this Protocol as their needs are covered by specific guidance in the SEN Code of Practice. Any consideration of a school move must be preceded by an EHCP Review.

4.1 The Fair Access Protocol must cover children who fall into one of the following 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 back into mainstream education or 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 (as evidenced by either child arrangements order not relating to either birth parent or a special guardianship order)
- 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 in accordance with paragraph 3.10 of the Admissions Code 2021
- 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 (see 4.2) 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.

4.2 **Reasonable distance:** The reasonable home to school travel distance is below 2 miles for children aged under 8, and under 3 miles for children aged 8 and over. This is measured as the shortest safe walking route as defined in the Wirral Home to School Transport Policy. Parents may apply for a school further than the reasonable distance; this does not necessarily carry with it eligibility for free home to school travel. Panel decisions which give a place at a school over the reasonable travel distance that were not a parental preference may result in free travel eligibility. The age needs and circumstances of the child may also be taken into account by the Panel in deciding if a travel distance is reasonable.

4.3 **Challenging behaviour:** Under the School Admissions Code 2021, 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 using these grounds, schools should consider their duties under that Act; including the implications when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.

4.4 Wirral’s Fair Access protocol **does not cover:**

- Children with an Education Health and Care Plan (see above); Any consideration of a school move must be preceded by an EHCP review.
- Children who are in care (looked after), as these children must be admitted (see above). **Any consideration of a school move for a child currently in care must be preceded by a PEP. The PEP should have representation from the existing school, social care and LACES.**

## 5.0 Fair Access Protocol Procedure

### 5.1 Referrals to the Fair Access Panel

Admission of **hard to place children** will be co-ordinated by the Mainstream Admissions team.

Where the requested school identifies that an application meets the criteria for a 'Hard to Place' pupil as defined above, the case must be notified to the Mainstream Admissions team within 5 school days who will refer the case to the Clerk of the Fair Access Panel.

Where none of the requested schools are able to or have refused to offer a place and the Mainstream Admissions team identifies that the child meets the Fair Access criteria, the Mainstream Admissions team may also refer an application directly to the Fair Access Panel.

**Managed Move decisions** and re-integration to mainstream school decisions for pupils attending **the Progress School** will be referred to the Fair Access Panel by the Managed Move and Exclusions manager.

5.4 In reaching a decision on the placement of a Hard to Place child, each panel will consider the balance of circumstances of the pupil and the circumstances of the school, taking into account the following factors:

- i. the distance and ease of travel from home to school;
- ii. the fairness of any placement and proportion of hard to place pupils in each school as reflected in the "grid";
- iii. the school that is the parent/carer's preferred choice;
- iv. the religious affiliation of the pupil (where possible)
- v. genuine concerns from the requested school about admission (e.g. previous serious breakdown of relationship or local issues that will have an impact on the school, child or child's family);
- vi. other reasonable considerations.

NB. Where a child is returning from elective home education, the Panel would firstly consider a placement at the Wirral secondary school the child most recently attended, unless there are strong grounds to decide otherwise, taking into account i. to vi. above.

5.3 **Failure to engage** - The Fair Access Panel may request the Attendance Service intervene with a family where it can be shown that a pupil has been placed through the Panel but the family fails to engage with the named school when it tries to secure admission of the pupil, e.g. parent/carer has failed to engage in securing admission of the child to the school within 5 working school days of notification that a place has been allocated.

- 5.4 **The Grid** - The Mainstream Admissions team will maintain a grid in order to ensure that schools are not being asked to admit a disproportionate number of pupils through the Protocol. This grid will also take into account permanent exclusions as a transfer out. When a pupil is admitted under the protocol, this will add a positive factor to the school's weighting whilst transfers out will add a negative factor. Pupils admitted or leaving through a 'Managed Move' or reintegration from the Progress Schools will also be included on this grid. A list of schools showing the number of vacancies in each year group will also be provided to the Panel.
- 5.5 **Outcomes of FAP panels** - Within 7 working days, the Clerk to the panel will inform any school not represented at a Panel if the decision relates to that school. The Clerk will inform parents in writing within 7 working days with a copy to the previous and requested school and to the Mainstream Admissions team.
- 5.6 **Right to an appeal** - Parents/carers retain a legal right to an appeal to an Independent Appeal Panel.
- 5.7 **Powers of Direction** - If a school is identified as the one to admit a child by a Fair Access Panel and refuses to do so, the local authority may use their powers of direction in the case of maintained schools or request the Secretary of State to intervene and direct an academy school. See 'Rules Governing Direction'.
- 5.8 **Placement Procedure** - for the purposes of this regulation a child is a pupil at the school from the beginning of the first day on which the school has agreed, or has been notified, that the pupil will attend the school.
- 5.9 Pupils join the school roll on the expected first day of attendance and must be listed in both admissions and the attendance registers from that day. If a child is the subject of a School Attendance Order, he/she only becomes registered at the school if the parents enrol him/her at the school and agree the first day on which the child will attend. If this does not happen the parent(s) are in breach of the Order. If the parents agree the first day that their child will attend, any subsequent absence should be treated in the same way as any other pupil.
- 5.10 **Monitoring** - In order to maintain transparency in the placement process and to facilitate the work of the Panels, the local authority will collect data on admissions and the list of schools. This data will be made available to each of the panels. An annual report will be presented to the Department's Senior Management Team; and to Schools Forum as required.
- 5.11 **Review** - The protocol will be reviewed annually.

## APPENDIX A

### Panel membership and terms of reference

The panel meets monthly or as required.

#### 1. Composition of the Panel

In addition to a Clerk, the Panel will include

- The Assistant Director for Education

The lead officers for the following services:

- Special Educational Needs and Disability
- School Attendance
- Managed Moves and Exclusions
- Alternative Provision
- 14 to 19
- Other persons as required

In addition, the Panel will include at minimum two headteachers\* on a volunteer basis, who will participate for a minimum of 12 months. Appointment of a new headteacher representative will be via nomination by Wirral Association of Secondary Headteachers (WASH) and will be staggered.

A Headteacher who is not currently a Panel member may attend as a non-participatory observer by request to the Panel Chair; agreement to this is at the Chair's discretion.

The Panel will include a primary headteacher representative\* where there is a referral for a primary aged child.

In all cases, headteachers will not consider applications in relation to their own school.

*\*The headteacher of a school may appoint a senior representative to attend the Panel, with full powers to act on his/her behalf in respect of decisions in relation to the placement of children brought to the panel.*

#### 2. Frequency of meeting

The Panel will meet at least monthly and may meet more frequently as required, e.g. bi-monthly.

3. The Panel will be chaired by the Lead Commissioner for Schools or their proxy representative.
4. The quorum for the panel will be a minimum of three members.
5. All in-year admissions will go through the Mainstream Admissions team. Schools opting out of in-year co-ordination must send Fair Access referrals to the Mainstream Admissions team within 5 days of receipt of a direct application being received.

6. The Clerk will be responsible for ensuring that all casework is prepared and made available to the Chair at least 5 school days prior to the panel meeting.
7. The Clerk will ensure that the Panel decision is communicated to the parent/carer and the schools concerned within 7 school days.
8. The school will agree a start date with the parent that is no later than 10 school days following the panel meeting.
9. Where the offer of a place is not in line with parental preference, parent/carers will be advised of the appropriate course of action they can take in the Clerk's letter to the parent, which will include the right to an appeal to an Independent Appeal Panel.
10. Decisions on placement will be by majority view.
11. The Chair's role is pivotal to the success of the panel. This includes overseeing data, liaising with School Admissions Team and school reps, providing support and acting as a mediator with some of the more difficult cases, negotiating with Heads and ultimately ensuring decisions taken are carried through.

### **Notes**

1. Any difficulties or delay in securing the identified placement of any pupil by a Fair Access Panel will be brought to the attention of the Director for Children, Families and Education by the Clerk or the Senior Manager for Admissions who will make a decision about the most appropriate response which may include direction to admit or referral to the Secretary of State to direct. The Director for Children, Families and Education may also write to the Chair of Governors if a school is deemed to be obstructing or not co-operating with the agreed protocol.
2. In order to monitor actions taken to place pupils presented to the panel, the Clerk will ensure that accurate records are maintained and that these are forwarded electronically within 7 working days to the Mainstream Admissions team. Data required will include allocated school, start date and pupil name.

## **Appendix B**

### **The Weightings**

#### PRINCIPLES

1. The list will allow comparisons between schools so that the admission and transfer of pupils under Fair Access/Managed Moves can easily be tracked
2. The weightings will enhance the priority of very vulnerable groups of children

#### FORMAT OF THE WEIGHTINGS

3. The list will be a simple spreadsheet identifying all schools in the relevant phase (primary and secondary) – “the Grid”.
4. There will be columns to track transferred in pupils, i.e. hard to place pupils admitted by the school (plus 1 point).
5. Columns will also track transferred out hard to place pupils (minus 1 point).
6. The difference between the ‘IN’ and the ‘OUT’ columns will give a net score for each year group and for each school overall. The school with the lowest or most negative weighted score will be deemed the next most likely school to admit a pupil, taking into account parental preference.
7. The spreadsheet will also maintain a column that records the number of ‘managed moves’ and re-integrations from the Progress School involving each school. These pupils will attract a single weighting (+1 point for the receiving school and -1 point for the transfer out school), which will be added to the weighted score for each school to give a total weighting.

Any subsequent failure of a Managed Move or reintegration will not be taken into account.

The summary sheet by year group and school will be provided to the Fair Access Panel.

#### MAINTENANCE AND USE OF THE WEIGHTINGS

8. The Mainstream Admissions team will maintain copies of the relative weightings and will ensure they are updated before the next relevant panel meeting.
9. The weightings will be used by Fair Access panels to inform their decision making about the school indicated to admit a pupil
10. The Grid for secondary schools will be provided by the Clerk to the Fair Access Panel at the end of each Academic term to the Chair of WASH.

## Appendix C

### Rules Governing Direction

**Local authority powers of direction (general)** - A local authority has the power to direct the admission authority for any maintained school in its area to admit a child even when the school is full. The local authority can only make such a direction in respect of a child in the local authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The local authority **must** choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded. It **must not** choose a sixth-form that selects by ability unless the child meets the selection requirements, or a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources.

Before deciding to give a direction, the local authority **must** consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. If, following consultation, the local authority decides to direct, it **must** inform the governing body and head teacher of the school. The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body **must** tell the local authority. The local authority **must not** make a direction until the 15 days have passed and the case has not been referred. If the case is referred to the Schools Adjudicator, the Schools Adjudicator may either uphold the direction, determine that another maintained school **must** admit the child or decide not to issue a direction. The Adjudicator's decision is binding. The Schools Adjudicator **must not** direct a school to admit a child if this would require the school to take measures to avoid breaking the rules on infant class sizes and those measures would prejudice the provision of efficient education or the efficient use of resources.

**Secretary of State's power of direction (Academies)** - Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child, and can seek advice from the Schools Adjudicator in reaching a decision