

# Ealing Fair Access Protocol

## 1. Introduction

- 1.1 This Protocol is effective from 01 September 2021. It applies to children and young people of statutory school age who have applied for a school place through the in-year admissions arrangements or are ready for re-integration from a pupil referral unit.
- 1.2 The Protocol sets out the principles and process that Ealing Council and all schools within the borough of Ealing will use when allocating places to children and young people covered by the protocol to a school or academy. The protocol meets the requirement to have such a scheme contained in the School Admissions Code 2021. It covers Community, Voluntary Aided, Foundation, Academy and Free Schools.
- 1.3 The Protocol was agreed by [all/the vast majority of] schools in the area and is binding on all admission authorities.
- 1.4 The Protocol:
  - recognises the vulnerability and needs of unplaced children, and the duty of the local authority (LA) to ensure educational provision for all children and young people resident in the borough
  - aims to support safeguarding of children and young people by admitting to school as quickly as possible those without a school place
  - 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
  - promotes an ethos of collective responsibility of all schools to work together effectively as a community to place and support these vulnerable pupils, and for the Ealing community of schools to co-operate and support each other in this process
  - is fair and transparent.
- 1.5 The allocation of a place in accordance with this Fair Access Protocol does not override a parent's right of appeal against refusal to offer a place by an admission authority at a school for which they have applied for a place.
- 1.6 Eligibility for this Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. A place will not be refused to a child on the basis that they may be eligible to be placed via the Fair Access Protocol. The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol.

## 2. Children and Young People covered by the Fair Access Protocol

- 2.1 Where a child or young person of statutory school age living in the borough of Ealing is unplaced and has not secured a place through the normal in-year admissions process and meets the criteria in paragraph 2.2 they will be allocated a place by the Panel under the Fair Access Protocol. The Panel will be chaired by a person nominated by Ealing High School head teachers Group on behalf of maintained, Academies and Free Schools in the borough. The panel will be administered by the Local Authority.

- 2.2 The Protocol covers any child or young person of statutory school age who has difficulty in securing a school place who are:
- 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 to the Protocol in accordance with paragraph 3.10 of the School Admissions 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; and
  - m) previously looked after children for whom the local authority has been unable to promptly secure a school place

### **3. Decision of an admissions authority to refuse to admit a child with challenging behaviour**

- 3.1 Under section 3.10 of the School Admissions Code 2021, 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.
- 3.2 An admission authority should only rely on the provision in paragraph 3.1 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.
- 3.3 Where the admissions authority exercises its right under paragraph 3.1, it must refer the case to the LA within 5 school days. The referral must be in writing with evidence from the previous school/agency and the reason/s why in the opinion of the admissions authority the admission would prejudice the provision of efficient education or efficient use of resources.
- 3.4 Where the admission authority of a school that does not co-ordinate in-year admissions exercises its right to refuse to admit under paragraph 3.1 it must also send a letter to the parent advising them of the grounds on which they have refused to admit and that the case has been referred to the LA, it must advise the parent of their right to appeal against the refusal to admit and provide information and advice available from the Children's Legal Centre.
- 3.5 Where a refusal is received for an unplaced child or young person that is resident in Ealing the LA will refer the case to the next Fair Access Panel for placement and a letter will be sent to the parent to advise them. The Panel, after considering the child's or young person's case, may decide to:
  - a. allocate the child to another school or EAP; or
  - b. confirm that the child or young person should be admitted at the school that has refused.
- 3.6 Where a refusal is received for a child or young person that is in appropriate full-time provision the LA will write to the parent to confirm that as a place as not been secured at the preferred school they should remain in their current provision.
- 3.7 For the purposes of section 3.1 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. It would be expected that this behaviour would significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.

- 3.8 The provision in paragraph 3.1 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.
- 3.9 Admission authorities cannot refuse to admit a child or young person 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.

#### **4. Elective Home Education**

- 4.1 The law permits parents to educate a child of compulsory school age at home. Where a parent confirms in writing that they are being educated otherwise than at school (elective home education) the school must remove the child's name from the school roll.
- 4.2 An unplaced child or young person living in the borough of Ealing will be admitted to the school attended prior to elective home education where the following conditions apply:
- a. Has been removed from a maintained school in the borough of Ealing to be electively home educated within the 16 weeks, which has ceased; and
  - b. Was subject to a permanent exclusion or fixed term exclusion pending investigation at the time they were removed from roll; and
  - c. Has not attended any other maintained school since being removed from roll to be educated at home.
- 4.3 Where a child or young person is identified by the in-year admissions team as meeting the conditions set out in section 4.2, they will immediately inform the relevant school.
- 4.4 The school is expected to re-admit the child within 10 working days of receiving the notification.

#### **5. Fair Access Procedures in Ealing**

- 5.1 All Ealing schools will share the admission of children and young people who have not secured a place through the in-year scheme or are assessed as ready for re-integration by Ealing Alternative Provision (EAP). All schools will deal with any case referred through Fair Access as a priority to expedite the child or young person's access to education. A child or young person allocated through the FAP must be prioritised above all other applicants that may be on a school's waiting list and must not be refused admission.
- 5.2 Children or young people not resident in Ealing who meet the criteria set out in section 2.2 will be referred to the home Local Authority to deal with under their own Fair Access Protocol.

- 5.3 The panel will cover both primary and high schools. The Panel will be chaired by a person nominated by Ealing's High School Heads Group. The panel will consist of other representatives of High schools selected on rotation and one primary Head nominated by Ealing Primary School Quadrant Chairs. Advice to the panel will be provided by the local authority. The Authority will also provide an administrator to clerk and minute the meetings. The Chair of the panel and the primary school head shall serve for one academic year and will be eligible for re-nomination in subsequent years. The two High School representatives shall serve for one term.
- 5.4 The Panel will meet every second week in term time. The time and location of the meeting will be agreed by the Chair. The Authority will provide background information for each child or young person to be considered by the panel. This will be circulated securely the day before the meeting to be read in advance.
- 5.5 Unless there is evidence that the child or young person would be inappropriately placed in a mainstream setting, the Panel will allocate to a particular school. In cases where there is evidence to indicate that a mainstream setting may not be appropriate an assessment placement at EAP will be agreed and the case will then be returned promptly to Panel.
- 5.6 A child or young person will be allocated to schools taking into account the following:
- a. an equal distribution by number to each school (as far as possible over the course of the year, and recognising new schools will not have all year groups)
  - b. parental and religious preferences
  - c. exceptional social or medical reasons for requiring placement at a particular school
  - d. travel time: high school pupils would, normally be expected to have a maximum journey time of 60 minutes, calculated using the TfL journey planner or similar web-based tool if the TfL planner is unavailable
  - e. in the case of a child of primary school age, proximity of the school to their home, and family circumstances
  - f. in the case of a child or young person ready for re-integration from EAP who will be admitted to a school on a trial basis with support, the number of pupils the receiving school has permanently excluded in the previous academic year also.
  - g. no allocations will be made to a school that has been graded at its latest inspection Grade 4.
- 5.7 Panel decisions will be communicated to schools securely electronically by the LA within two days of the Panel. The expectation is that the recommendation of the panel will be accepted by a school and pupils will not be refused admission. An admission date for the child or young person should be set as soon as possible but normally within 10 school days following the notification. In-year Fair Access Panel allocations will be sent an offer letter within 5 school days of the notification. Admission for re-integrations will be arranged with EAP.
- 5.8 Minutes and a recording of allocations will be circulated to all schools by the LA within two days of the Panel.

## **6. Issues specific to each sector**

### **Infant Class Size Regulations**

- 6.1 Regulation 5 of The School Admissions (Infant Class Sizes) Regulations (2012) provides for exceptions to the limit of 30 pupils per qualified teacher in limited circumstances. One of the exceptions applies to children who moved into the area outside the normal admissions round, that is at the time when the majority of the pupils in the age group were admitted to the school and for whom there is no other available school place within a reasonable distance.

### **Year 11 students**

- 6.2 Young people in Year 11 will be provided with the option to attend specific Year 11 provision in a local college commissioned by the Authority, though they retain their right to express a preference for an Ealing High School and appeal against a decision by an admission authority to refuse to offer a place. Year 11 students who cannot be offered an in-year place will be placed in provision commissioned by *the* EAP where they have challenging behaviour warranting this level of support. Parents retain their right of appeal against a decision to refuse to admit to a school by an admission authority.

## **7. Resolving differences of opinion**

- 7.1 The purpose of this protocol is to ensure that children and young people who are vulnerable are placed in provision as quickly as possible and that there is a fair and transparent decision making process led by schools recognising their collective responsibility to children resident in the borough. Where a school refuses to admit a student, the evidence will be reviewed by the Panel. Following the panel's review and confirmation of the allocated school, if a school still refuses to take a student then the Director of Children's Services (or a senior officer nominated for this purpose) will review the case with the Chair of the Panel and the school prior to consideration of a direction. However, in the case of a community school it cannot refuse to admit a pupil if requested by its own admissions authority.
- 7.2 As a last resort, 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.
- 7.3 Should an Academy refuse to admit a child or young person in accordance with the protocol, the local authority may refer the matter to the Secretary of State for consideration who may subsequently make a direction and can seek advice from the Schools Adjudicator in reaching a decision.

## **8. Students not ready for mainstream schooling**

- 8.1 Where a school, parent or LA considers an unplaced child or young person, may not be ready for mainstream school the case will be dealt with by the In-Year Admissions Team. Where possible e.g. parents will be assisted in making a medical referral by liaising with the consultant and ensuring the case is considered by EAP Placement Panel, or is referred to the Fair Access Panel.

## **9. Monitoring and Review**

- 9.1 An end of year report will be circulated to all schools. Each panel member will receive information on the number of cases considered and the allocation of children and young people to schools through each criteria and data on cases refused admission by a school.
- 9.2 In the event that the majority of schools in an area can no longer support the principles and approach of their local Fair Access Protocol, they should initiate a review with the local authority.
- 9.3 The operation of the protocol shall be reviewed annually in the summer term.