



**Walsall Council**

# Walsall Admissions Protocol for looked after and previously looked after children

## **1. Aim**

The aim of this document is to set out the key processes that Walsall Virtual School and Admission Team follow in order to ensure the consistent, transparent and timely mid-year admission of a looked after or previously look after child without and EHCP and outside the normal admission round.

## **2. Interpretation**

In this Protocol:

‘the LA’ means Walsall Council acting in its capacity as local authority;

‘school’ means a community, foundation, voluntary-controlled (‘VC’), voluntary-aided (‘VA’), or trust school which is maintained by the LA or an academy or free school (but not a special school);

‘mid-year application’ means any application for a school place in any year group at a school received during the school year, other than in the normal admissions round;

‘normal admissions round’ means the period in which parents/carers can apply for a school place for their child for September entry to a reception class, year three of a junior school or year seven of a secondary school which are referred to as the ‘normal point of entry’ in each case;

‘parent’ means a parent/carer/body which has Parental Responsibility for the child;

‘PAN’ means the Published Admission Number for the year of entry at a school;

A ‘looked after child is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989).

‘Previously looked after’ in this Protocol means a child that was in care but immediately after being in care became subject to an Adoption, Child Arrangement, or Special Guardianship Order. A ‘Child Arrangement Order’ is an order settling the arrangements to be made as to the person with whom the child is to live under Section 8 of the Children Act 1989. Section 14A of the Children Act 1989 defines a ‘Special Guardianship Order’ as an order appointing one or more individuals to be a child’s special guardian (or special guardians).

## **2. Introduction**

Walsal Council is committed to ensuring that every looked after and previously looked after child is admitted to a school which is appropriate to their needs and situation, without delay. Certain legislative provisions support this aim and these, along with Walsall’s agreed processes, are described in this Protocol.

Delays in accessing school places can have a negative impact on children: increasing gaps in education, making eventual integration to school more difficult and putting stress on fostering arrangements that can result in breakdown of the placement.

The Department for Education statutory guidance ‘Promoting the education of looked after children’ (July 2014) states that a local authority’s Virtual Head has the responsibility of ensuring that, among other things:

- Admission authorities understand that they cannot refuse to admit a looked after child on the basis of challenging behaviour or refer a looked after child for action under the Fair Access Protocol on the basis of challenging behaviour (See paragraph 3.12 of the School Admissions Code).
- admission authorities understand that looked-after children can be admitted as ‘excepted pupils’ in relation to the infant class size limit, if they are admitted outside the normal admission round (see 2.15(b) of the School Admissions Code); and
- the local authority, **as a corporate parent, does not tolerate drift and delay where children the authority looks after are without an education placement that is appropriate to their assessed needs. This includes using their powers of direction in a timely way rather than delay issuing a direction as a result of protracted negotiation.**

The Admissions Authority refers to local authorities, academy trusts and governing bodies.

Although there is a need to ensure that looked after and previously looked after children are placed in a school as quickly as reasonably possible, the speed of allocation will depend on the nature and complexity of the case. The speed of admittance will also depend on appropriate arrangements being in place to support this.

### 3. Legislative provisions

#### Priority in oversubscription

The law stipulates that looked after and previously looked after children must receive top priority for a school place within each school’s admission arrangements.

The School Admissions Code 2014 (‘the Code’) states:

**‘1.7:** All schools must have oversubscription criteria for each ‘relevant age group’ and the highest priority must be given, unless otherwise provided in this Code, to looked after children and previously looked after children.’

#### Priority over children on waiting lists

In accordance with **2.14** of the Code, looked after and previously looked after children must take precedence over those on a waiting list

#### Admission to infant classes

It is also possible for looked after and previously looked after children to be admitted to an infant class, outside the normal admissions round, even if that class has already reached the 30 limit required by the Infant Class Size Regulations. They would be admitted as an ‘excepted pupil’ for the time they are in the class or until the class numbers fall back to the current infant class size limit (**2.15 (b)** of the Code).

#### Outside the Fair Access Protocol

**Children in care and those that were previously in care do not fall under the LA’s Fair Access Protocol.**

Governing bodies may refer applications for children considered to have challenging behaviour under the LA’s Fair Access Protocol – **however, this is with the exception of looked after and previously looked after children** to whom this provision (**3.12** of the Code) **does not apply** as these children **‘must be admitted.’**

## Faith Schools

Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they must give priority to looked after children and previously looked after children of the faith before other children of the faith.

Where any element of priority is given in relation to children not of the faith they must give priority to looked after children and previously looked after children not of the faith above other children not of the faith.

## LA powers of direction

In the case of maintained schools:

**'3.19:** A local authority has the power to direct the admission authority for **any maintained school** in England to admit a child who is looked after by the local authority, even when the school is full. The local authority must not choose a school from which the child is permanently excluded but may choose a school whose infant classes are already at the maximum size.'

It should be noted that an admission authority or governing body wishing to refuse the placement **must not** refer the case to the Schools Adjudicator unless it considers that admitting the child would seriously prejudice the provision of efficient education or the efficient use of resources (**3.20** of the Code).

In the case of academy/free schools:

**'3.22:** 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 Adjudicator in reaching a decision.'

## Annual report

The LA is required to produce an annual report for the Schools Adjudicator covering all schools in its area (**3.23** of the Code). This includes how the admission arrangements serve the interests of children in care and those that were previously in care.

## Statutory guidance

The Department for Education statutory guidance 'Promoting the education of looked after children' (July 2014) states, in relation to school admissions:

**'24.** It is the responsibility of the VSH [Virtual School Headteacher] to ensure that:

- admission authorities understand that Fair Access Protocols **do not** apply to looked after children and that they are 'excepted pupils' in relation to infant class size regulations;
- The local authority, as a corporate parent, does not tolerate drift and delay where children the authority looks after are without an education placement that is appropriate to their assessed needs. This includes using their powers of direction in a timely way rather than delay issuing a direction as a result of protracted negotiation.

**25.** The choice of school requires skilled working between relevant people. It should be based on a discussion between the child's social worker, their carers and, if appropriate, birth parents. The VSH should normally be consulted to avoid choosing a school that is unlikely to meet the child's needs. Delegated authority about choice of school should be addressed explicitly in the child's permanence plan, which is part of their wider care plan.'

## **4. Walsall LA Processes**

The following processes and principles will be adhered to in relation to school place applications for looked after and previously looked after children to ensure that schools' and the LA's duties are met in relation to these children.

### **Identifying a school place and completing the application form**

**4.1.** Prior to completion of the Mid-year Application Form for a child currently in the care of Walsall LA, a representative of the Virtual School will consult with the social worker as to the most appropriate school for the child and where there is no space at the school, will make contact with the school to discuss the proposed placement.

**4.2.** Mid-year applications for looked after children will be completed by the relevant social worker with professional advice from the Virtual School. Schools and the Admissions and Appeals Team will inform the Virtual School of all applications submitted for a looked after child which has not been completed by the social worker, before processing.

**4.3.** Once the application form has been received by Walsall Admissions and Appeals Team it will be referred within 5 working days to the preferred school for placement

**4.4.** Applications for schools in Walsall which are received for children in the care of another local authority will be considered using the same principles outlined in this Protocol.

**4.5.** The Virtual School will inform the Admissions and Appeals Team where an agreement has been reached with a school to accept a pupil even though they are full.

### **Processing of applications**

**4.6.** Applications for looked after and previously looked after children received for the normal admissions round will be managed in accordance with the LA's Co-ordinated Admissions Scheme for the relevant school phase (i.e. primary or secondary).

**4.7.** No applications for looked after or previously looked after children will be referred under the LA's Fair Access Protocol. This recognises their overriding priority in school admissions.

**4.8.** If a school place is required for looked after and previously looked after children that have a Statement of SEN or an Education, Health and Care Plan, this will be handled by the Special Educational Needs Assessment Team, outside the normal admissions process and this Protocol. The principles of swift and appropriate placement will still apply.

**4.9.** If a school has a place available, own admission authority schools will be expected to respond to a request to confirm that they have a place available within two school days. The child must then be admitted as quickly as reasonably possible.

**4.10.** If a school has admitted up to its published admission number and does not have a place available, they will have seven days to respond to a request to admit above PAN to take a child in care or child that was previously in care.

#### **School refusals and LA/Secretary of State direction**

**4.11.** If the school does not have places available and the admission authority does not wish to admit the child above their PAN or other agreed limit, it must indicate its reasons for not wishing to admit the child in their letter of response which must be sent within seven days of receiving the referral.

**4.12. However, taking into account the process that the Virtual School will have been through to identify and agree an appropriate school place, it is expected that direction would very rarely be needed. Protracted negotiations and direction will be avoided by:**

- i. effective and timely liaison with the proposed school by Virtual School representatives and the Admissions and Pupil Place Planning Team;
- ii. effective information sharing;
- iii. an acceptance by all parties that swift placement of looked after children is paramount and that the necessity of proceeding to a direction will delay placement and should be avoided.

**4.13.** Service Manager, Admissions and Appeals and Virtual School Lead will review any refusal and in doing so will take into account:

- i. the reasons presented by the school;
- ii. Whether or not the school is already more than 5% over PAN or other agreed limit in the year group;
- iii. The number of Fair Access placements, children in care, children that were previously in care and children with additional needs in the year group;
- iv. whether the school has been recently judged by Ofsted to be inadequate following a Section 5 inspection or Section 8 monitoring visit (i.e. is judged to require Special Measures or to have Serious Weaknesses)
- v. the circumstances of the child, including where they live
- vi. any information provided by professionals e.g. a social worker.

**4.14.** If the Admissions and Appeals manager and The Virtual School Lead still believe that the school is the most appropriate for the child they will proceed to a direction or request for a direction, as defined in the Code.

They will not choose a school from which the child is permanently excluded but may choose a school whose infant class size is already at the maximum size.

#### **4.15. Process for directing a maintained school:**

If, within seven days of a request to a foundation, trust or voluntary-aided school, that school refuses to accept a looked after or previously looked after child or does not respond to the request the LA may decide to direct the school to take the child, having reviewed any response.

- The LA will inform the admission authority and the Headteacher of the direction.
- In the case of community and voluntary-controlled schools, the LA, as the admission authority, will place the child in the school.
- The admission authority of a foundation, trust or voluntary-aided school can then appeal by referring the case to the Schools Adjudicator within seven days of the direction. The admission authority must notify the LA if it refers the case.
- The governing body of a community or voluntary-controlled school may also refer the case to the Adjudicator if the child has been permanently excluded from two other schools and the most recent exclusion was within the previous two years. The governing body must notify the LA if it refers the case.

- **The admission authority or governing body must not refer the case unless it considers that admitting the child would seriously prejudice the provision of efficient education or the efficient use of resources.**

If, within seven days after a direction to a maintained school, the school has not responded or made a referral to the Adjudicator, the LA will go ahead with the placement.

**4.16. Process for requesting a direction to an academy/free school:**

If an academy refuses a place for a looked after or previously looked after child within seven days of a request by the LA, the LA will review the response and may decide to submit a direction request to the Education and Skills Funding Agency.

**4.17.** The Code and guidance on requesting a direction from the Secretary of State are clear that directions are a last resort and that the LA and schools would be expected to come to an agreement about the admission of vulnerable pupils. In the case of children in care, the Secretary of State will make a decision taking into account whether they consider the LA has acted reasonably.

**Monitoring**

**4.17.** The Virtual School will monitor the details of which schools have been asked to admit children in care.

Mid-Year Admissions Flow Chart for looked after and previously looked after children

Social worker to discuss school application with virtual school prior to application

Mid- Year Application form received

Virtual School confirm LAC status

Admission form processed within 5 days

Request agreed

Offer letter sent out to  
parents/carers

Request refused

Schools must state the reason for refusal in writing  
within 5 days

Refusal decision reviewed by Admissions Team  
manager and Virtual School Lead

Refusal decision upheld

A new request or lower  
preference considered

Refusal decision dismissed

Proceed to a direction or  
request for a direction, as  
defined in the Code.