



Office of  
the Schools  
Adjudicator

# Office of the Schools Adjudicator Annual Report

1 January 2021 to 31 December 2021

**April 2022**

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## Introduction and executive summary

1. This report to the Secretary of State for Education (the Secretary of State) covers the work of the Office of the Schools Adjudicator (OSA) during the calendar year 2021 and local authority reports which generally relate to the financial year 2020-2021.

2. In the period covered by this report, the number of new cases submitted to the OSA was 297. This was far below the number submitted last year but that unprecedentedly high number was driven by requests for variations to admission arrangements needed because of the Covid-19 pandemic<sup>1</sup>. This year's numbers were within the ranges seen over past years. As always, I hope that the findings drawn from adjudicator casework and from reports made to me by local authorities in accordance with the School Standards and Framework Act 1998 will be of use to the Secretary of State, Ministers and officials, local authorities, faith bodies, academy trusts and school governing boards.

3. Part 1 of the report deals with casework dealt with adjudicators. Last year I extended the period covered by my report so that it ran from 1 September 2019 to 31 December 2020 and allowed me to explain how the OSA had dealt with variations to admission arrangements necessitated by the Covid-19 pandemic. Part 2 of the report summarises reports made to me by local authorities in accordance with a template provided by the OSA. As last year, we decided with the agreement of the DfE to keep our requests for information from local authorities to the minimum required by the Code, in recognition of the continuing burdens on local authorities related to the pandemic. Last year, we did not receive a return from every local authority but I am very pleased to be able to say that this year every local authority has submitted a return. It is also worth noting here that many local authorities expressed their welcome and support for the new Admissions Code which had recently been laid before Parliament as local authorities were submitting their reports and is now in force.

4. I have decided, with the agreement of the Department for Education (DfE), that reports of the work of the OSA should move permanently to a calendar year basis. There are two reasons for this change. First, virtually all objections to admission arrangements (which form the largest single element of adjudicator casework) are determined by the end of the calendar year in which they are made and reporting on a calendar year basis allows me to give a fuller account of these. Second, from 2022 local authority reports will cover academic years and will be submitted to the OSA by the end of October each year. Naturally it takes some time for the OSA to study these reports and identify the key points and this again makes a report completed in the early months of each calendar year a realistic and sensible aim.

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<sup>1</sup> In 2019/20 1031 cases were referred to the OSA reaching 1388 by 31 December 2020.

5. We began the year with four **objections to and referrals of admission arrangements** which had been made in 2020 but not completed. A further 146 new objections and referrals were made by the end of December 2021. We completed 141 cases by the end of December 2021 and so carried nine cases forward into 2022.

6. At the beginning of the year, we had twelve requests for **variations** carried forward from December 2020, three of which related to Covid-19 and nine to other matters. By 31 December 2021, we had received 18 requests for variations relating to Covid-19, and 98 requests for variations not related to Covid-19. By 31 December we had completed 18 of the requests related to Covid-19 and 106 of the cases not related to Covid-19. Thus, a total of four variation requests had to be carried forward into 2022.

7. The number of referrals of a local authority's notice of intention to **direct a maintained school to admit a pupil** combined with the number of cases where the Education and Skills Funding Agency (ESFA) on behalf of the Secretary of State **requested advice on the admission of a child to an academy** was 28. We had brought forward two cases from 2020. A total of 28 cases were completed during the year and so two were carried forward to 2022. Five **statutory proposals** were referred to us compared to eight the previous year and all were completed in year. We received two requests to resolve disputes relating to **land transfers** and both were completed by the end of the year.

8. Throughout the period covered by this report schools, academy trusts, faith bodies and local authorities faced continuing challenges and pressures resulting from the Covid-19 pandemic. We sought to take these additional pressures into account when setting deadlines for responses to our enquiries. In most cases, any delays were minor and understandable. However, in some objections to admission arrangements cases and – worse – in some direction and direction advice cases (which often involve vulnerable children who are out of school), there were longer delays in responding to our requests for information which in turn meant that cases took longer than should have been necessary to complete.

**Shan Scott**

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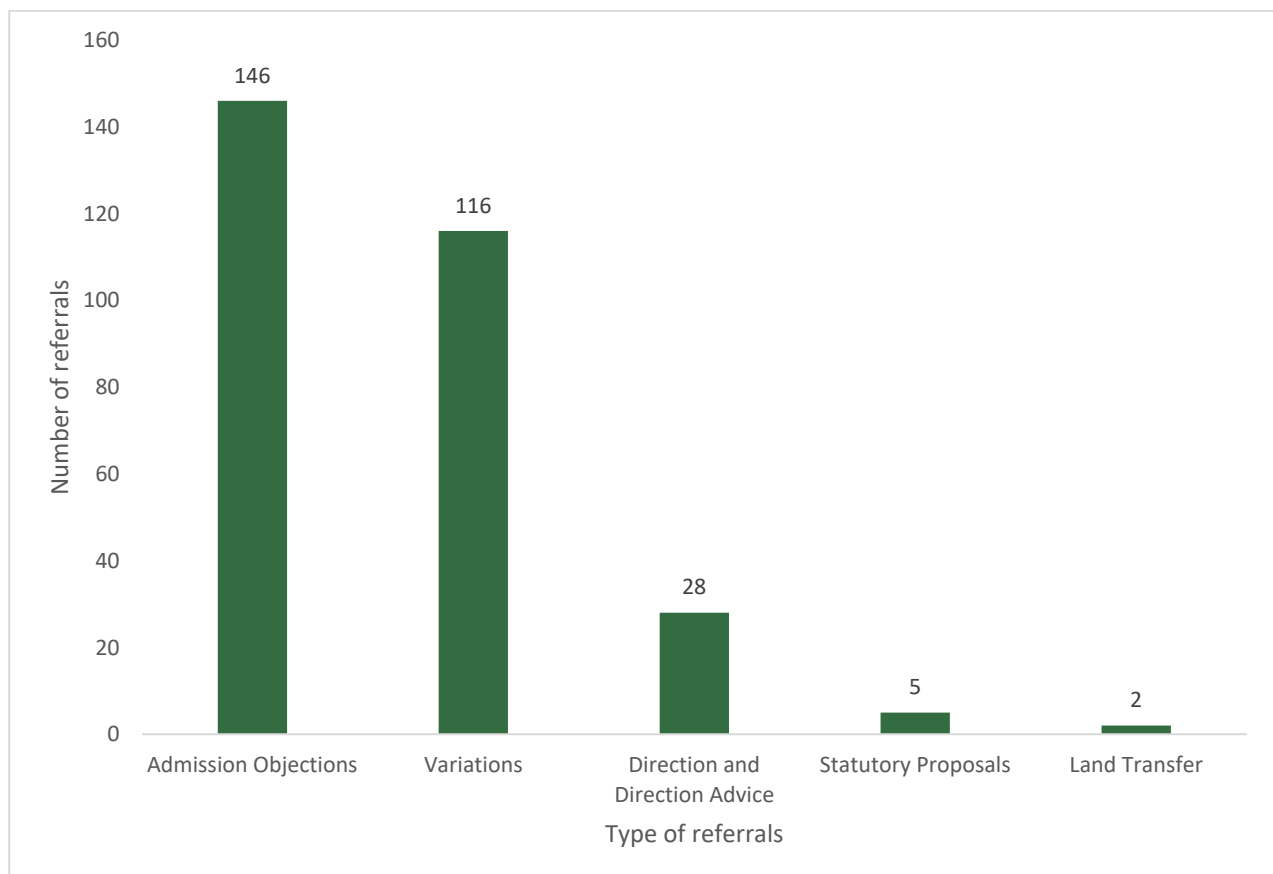
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## Part 1 - Review of OSA work in the period 1 January 2021 to 31 December 2021

9. We began the year carrying forward four admissions cases and 14 other cases. As in previous years, the number of new cases began to rise from February. The total number of new cases referred to us during the course of 2021 was 297 and the breakdown by type of case is shown in figure 1. While there is a deadline for objections to admissions arrangements which means that this element of our work is seasonal and peaks in the summer, other types of case can be and are referred at any point of the year. Thus, it is almost inevitable that some cases will be carried forward from one reporting year to the next.

**Figure 1:** New Referrals by type 1 January 2021 to 31 December 2021



# Admissions

## Objections to and referrals of admission arrangements

**Table 1:** Admissions cases by year and outcome

	1 January 2021 – 31 December 2021	1 January 2020 – 31 December 2020
Number of cases considered	150	119
Number of new cases	146	119
Cases carried forward from previous year	4	0
Number of individual admission authorities within new cases	86	89
Cases finalised	141	115
Objections fully upheld/found not to conform with requirements	22	45
Objections partially upheld	43	33
Objections not upheld	68	30
Cases withdrawn	4	1
Cases out of jurisdiction	4	6
Cases carried forward into following year	9	4

10. The 146 new cases received this year related to 86 individual admission authorities. As in past years, new cases related to all categories of schools with 15 to the admission arrangements for community and voluntary controlled schools in eight local authorities, ten to ten voluntary aided schools, two to two foundation schools and 119 to 66 academy schools, including free schools. As last year, non-compliant arrangements were found for every category of school, including schools where the admission authority is a local authority, a board of governors or a multi-academy trust. Parents and members of the public between them remained the single largest group of objectors, accounting for almost 79 per cent of all objections. Local authorities, individual councillors, the governing boards of other schools, a religious authority and the Local Government and Social Care Ombudsman were among others who made objections. Table 1 above gives the outcome for each case completed. Of those 141 cases where a conclusion was reached by 31 December 2021, 47 were found to have no fault in their arrangements

(meaning that the objection was not upheld, and no other breaches of the requirements were found). In 22 cases the objection was upheld and in 43 it was partially upheld. In 21 of the 68 cases where the objection was not upheld, other matters were found not to comply with the requirements relating to admissions. Four cases were withdrawn and four were found to be outside our jurisdiction. Nine cases were carried forward into 2022 most of which had been referred to us in the autumn, so several months after the deadline for objections to admission arrangements but considered by the adjudicator using the power to do so because they raised particularly important issues.

11. As in previous years, objections covered a wide range of matters, including the use and fairness of feeder schools and catchment areas in arrangements, the priority given or not given to children on the basis of faith membership and practice, the published admission number (PAN) set for the school and whether arrangements were overall clear and fair. One individual objected to the arrangements of 21 different selective and partially selective schools. Most aspects of the arrangements complained about in these cases were not found to be in breach of the Code. One school's arrangements were the subject of 37 objections covering eight different matters in a variety of combinations, none of which was upheld. As in past years, whether or not objections were upheld, it was understandable why most objections had been made – often driven by a reasonable wish by parents that their child should have high priority for a particular school. On the other hand, we continue to receive objections which appear to be driven by a wish to change the requirements relating to admissions. For example, we received objections showing a stubborn refusal to accept that the law and Code allow selective schools to give priority to children entitled to pupil premiums and to have catchment areas if their admission authorities so wish and the catchment area is reasonable and clearly defined. We have no option other than to consider such objections given the statutory duties imposed on us and, in doing so, strive to keep the burdens they place on admission authorities to the minimum.

12. A number of the matters which featured in objections made this year have been covered in past reports. Those reports remain available at [OSA annual report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/OSA-annual-report-2021-22.pdf) and I thought it might also be helpful to provide the following table which gives details of where further information about particular matters can be found.

**Table 2:** Matters covered in past reports

Matter	Annual Report (paragraph numbers in brackets)
Admission outside normal age group (not restricted to summer born children below compulsory school age)	2016/2017 (23)

Matter	Annual Report (paragraph numbers in brackets)
Consultation	2015/2016 (24 -26, 49) 2016/2017 (13, 36 - 40) 2017/2018 (20) 2018/2019 (15 – 16)
Catchment areas (including those created by use of “nearest school” criterion)	2015/2016 (36) 2016/2017 (16 – 18) 2018/2019 (18 – 19) 2019/December 2020 (13)
Complexity of arrangements	2015/2016 (45) 2016/2017 (20)
Faith based arrangements (including that schools with a religious character do not have to have faith based arrangements)	2015/2016 (41 – 44) 2016/2017 (21 – 22)
Feeder schools	2015/2016 (37 – 40) 2016/2017 (18)
Priority for children who have attended a school’s nursery	2015/2016 (33)
Published admission numbers	2016/2017 (26) 2018/2019 (23)
Selection and grammar schools	2016/2017 (19) 2018/2019 (22) 2019/December 2020 (14)
Siblings	2015/2016 (35) 2016/2017 (15)
Sixth form admissions	2018/2019 (21)
Summer born children	2015/2016 (34) 2016/2017 (23) 2018/2019 (97 – 98)



13. There are three matters in particular that I consider it worth saying more about in this section of the report – either because they are new matters or are more commonly raised or because adjudicators are concerned at apparent lack of understanding of Code requirements. The matters are objections to reduced PANs, the approach taken in a number of sets of arrangements seen by adjudicators as to how children’s home addresses are to be established for the purpose of admissions, and the use in schools with a religious character of criteria giving priority to those of other faiths.

14. I deal first with objections to **reduced PANs**. The PAN is an extremely important element of any set of admission arrangements. Where enough children seek places, the PAN represents the minimum number who must be admitted in a normal year of entry. Any reduction in PAN can therefore restrict the meeting of parental preferences and so, where that happens, requires appropriate justification. All objections relating to PANs are considered on their merits of course, but I think it might be helpful if I outline some of the matters adjudicators take into account in considering objections to PANs. Adjudicators will always consider the impact on parental preference. We will also consider the capacity of the school. This is particularly important where a local authority has objected because of concerns that a reduced PAN will affect its ability to secure enough school places. Local authorities are eligible for capital funding – known as basic need funding – to support the provision of additional school places where pupil numbers are rising. The methodology for calculating how much will be provided is set out in the DfE’s document “Capital funding for school places by 2023: explanatory note on methodology” which can be found at <https://www.gov.uk/government/publications/basic-need-allocations>. This states that “Basic need funding is allocated on the basis of a comparison of school capacity (not pupil admission numbers) ...” It follows that a local authority which expects pupil numbers to rise will be concerned if a school has a PAN lower than its capacity would support. Where the PAN times the number of year groups is lower than capacity, then there will be no scope to receive basic need capital funding to make good the gap between PAN and capacity. For example, if a primary school has a PAN of 30 but a capacity of 420, it will be the 420 capacity and not the PAN of 30 multiplied by seven years groups (that is, 210) that counts for the purposes of basic need funding. In addition, as I described in my annual report for 2018/2019 objections to reduced PANs are also given very careful consideration because if an objection to a reduced PAN is not upheld the scope to object to its remaining at that level in future years is very limited. No-one can object to a PAN for a school for which the local authority is not the admission authority if that PAN is the same or greater than the PAN that applied the previous year. Only the governing board of a community or voluntary controlled school can object if the PAN set for its school by the local authority is the same or greater than in the previous year.

15. This year we dealt with nine objections to reduced PANs and they fell into two distinct categories. The first and larger group comprised objections by the governing bodies of community schools where the PANs for their schools had been reduced by the local authority and the second group objections by local authorities to reduced PANs determined by other admission authorities in their areas.

16. In the cases of the community schools, the governing boards were exercising their right under paragraph 1.3 of the Code “to object to the Schools Adjudicator if the PAN set for them is lower than they would wish”. In these cases, it was safe to assume that the local authority is not concerned about the duty to secure places. It is the admission authority and has, after all, set the PAN. In addition, it can always increase the PAN in future years should it need to do so. Indeed, it was clear that the local authority was more concerned about the rising levels of surplus places. I have written in past years about requests for variations to reduce PANs in the light of falling demand for places, particularly in primary schools, in a number of parts of the country and I return to this matter in paragraphs 31 - 32 of this report.

17. Seven of the objections to reduced PANs concerned five schools in a single local authority area where the local authority had consulted on and set reduced PANs at a number of schools in response to falling rolls across the local authority area as a whole. In its response to the objections, the local authority explained that had opted to seek to reduce PANs at larger primary schools for which it was the admission authority and, in part, had taken this approach to try and ensure that no school would become unviable as a result of falling demand. The local authority had also sought to ensure that the number of places in each of its “planning areas” would at least equal the number of children living in that area. However, some of the schools whose PAN was to be reduced were fully or oversubscribed at their existing, higher, PAN. A number of the affected schools objected as did two parents in one case. In considering these cases the adjudicator had regard to paragraph 1.3 of the Code which states, so far as is relevant here: “Community and voluntary controlled schools have the right to object to the Schools Adjudicator if the PAN set for them is lower than they would wish. There is a strong presumption in favour of an increase to the PAN to which the schools adjudicator **must** have regard when considering any such objection.” For four of the schools, the objections to the reduction in the PAN were upheld. While the local authority had taken account of the numbers of children living in each planning area, it did not seem to have considered fully that in this small and quite urban area for many parents one or more easily accessible schools might be located outside the relevant planning area and indeed be closer than schools in the planning area. In addition, as one governing board argued, “the apparent aim of the PAN reduction across the City is to displace children to undersubscribed schools, in order to support their financial sustainability. This is evidenced by a number of currently undersubscribed schools being excluded from the proposal [the reduction in PANs]...”.

18. There were two objections by local authorities to PAN reductions by schools for which the local authority was not the admission authority, both involving secondary schools. Both objections were based on concern on the part of the local authorities that the reductions would threaten their ability to meet the duty to secure the provision of school places in their areas. In one case, the school disagreed with the local authority’s forecast of the demand for places and wished to limit its own admissions to ensure that all its classes were full, so that its preferred curriculum model could be afforded. The adjudicator rejected both lines of argument from the school. Both of the objections by

local authorities to reduced PANs at schools for which they were not the admission authority were upheld with the result that the PAN was not reduced.

19. I also continue to be concerned about an apparent lack of understanding of the role and effect of the PAN. As I have said in previous reports, the PAN does not apply beyond the year of normal admission. The decision about whether or not a pupil can be admitted outside years of normal admission is made by the admission authority and the law requires that the decision is based on whether admission of a pupil would cause prejudice to the efficient delivery of education or use of resources in the school. A school which had a PAN of, say, 240 which admitted only 178 to Year 7 is likely to have organised its timetable and staffing on the basis of six forms of entry (180 children). When that cohort reaches year 8 or year 9, its admission authority may choose to argue that admitting further children into that year group much beyond 180 would be prejudicial to the provision of efficient education or the efficient use of resources. If an applicant then wishes to appeal against a refused application for in-year admission they have the right to do so to the admission authority's independent appeal panel. The appeal panel would hear the arguments from the school and weigh these against the arguments of the parent before deciding whether or not a place should be offered. In this context, I note that in cases where admission authorities wish to reduce PANs (either through the normal process where that then leads to an objection and by variations) it is not uncommon for the expected impact on cohorts already in the school to be raised. The adjudicator will make clear that a reduction in PAN does not directly affect other year groups.

20. A number of objections received this year concerned **how home addresses are to be determined**. I have written in the past about approaches to determining the home address of a child whose parents are separated and that the address of the parent who receives child benefit alone is not a reliable indicator of a child's address<sup>2</sup>. In my report last year<sup>3</sup>, I referred to the Code's requirement that arrangements set out clearly how home addresses will be determined. This year a number of objections raised concerns about tenancy requirements and the length of time families had to live at an address for it be considered their home, especially if a dwelling was retained elsewhere.

21. Where address affects the chance of gaining a place at a school, some admission authorities adopt residence requirements for the purpose of ensuring applicants really do live in a catchment area or close to the school. It is entirely fair and reasonable for an admission authority to set out circumstances in which it may further investigate a home address and to set out the types of evidence which may be required in order for it to make a finding of fact as to whether a claimed address is genuine or not. This addresses the legitimate need to prevent the use of false addresses in applications. That said, adjudicators are likely to find it unfair where admission arrangements include

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<sup>2</sup> See paragraph 20 of 2018/2019 annual report

<sup>3</sup> See paragraph 12 of 2019 to December 2020 report

absolute requirements which some applicants may be unable to meet even though they really do live at the address concerned.

22. I deal first with tenancies. It is not uncommon for adjudicators to see admission arrangements which refer to tenancies needing to be for a minimum of 12 months or sometimes longer. Most residential tenancies involving private landlords are assured shorthold tenancies (ASTs) made under the provisions of the Housing Act 1988. The tenancy will have an initial term, the minimum being six months, and, when that term expires, the tenancy will automatically continue on a periodic basis (determined by the intervals for paying rent, so usually one week or one month) unless the landlord and tenant enter into a further agreement for some other term. The website for Shelter England states “An assured shorthold tenancy is the most common type of tenancy if you rent from a private landlord or letting agent. The main feature that makes an AST different from other types of tenancy is that your landlord can evict you without a reason”. Shelter goes on to state that such tenancies are for a fixed term “often 6 or 12 months” or periodic “rolling weekly or monthly”. Government guidance “Tenancy Agreements: a guide for landlords (England and Wales)” states “The most common form of tenancy is an AST. Most new tenancies are automatically this type”. To sum up, tenancies will be for a range of terms but often this will initially be for six months and thereafter on a monthly periodic basis. Moreover, families with low income and/or in receipt of benefits may be more likely to have short tenancies as they are more likely to be in a poor bargaining position and shorter tenancies may suit the landlord.

23. Some families may take short tenancies near to a school in order to seek to secure a place for a child with no genuine intention to make that property their main residence. It is understandable that admission authorities wish to prevent such families gaining an unfair advantage. Admission authorities take different approaches to this problem. Some specify circumstances in which they will make further enquiries in order to establish whether the address given is a genuine home address, a short term tenancy being a common example. Others make a longer term tenancy an absolute requirement. In the latter case some families, particularly those that have limited resources, will be excluded despite the home address being genuine. Such families may have had no choice but to accept a short lease. For that reason, any absolute requirement for a lease to be for a term greater than six months is likely to be found not to comply with the provisions of paragraph 14 of the Code which requires arrangements to be fair. Arrangements which exclude some families because of their financial situation are unlikely to be fair.

24. I turn now to requirements relating to how long a family must have lived in an area as distinct from the length of their tenancy. Some admission arrangements provide that in certain circumstances a recent move from a more distant address where the previous property is retained will lead to a rejection of the current address as genuine. I understand that this measure is intended to prevent the use of a temporary address in order to gain an unfair advantage in admissions and this is, of course, a legitimate purpose. However, the difficulty arises where this is an absolute provision. It is conceivable that families may, for example, retain a more distant alternative property

whilst having a genuine home address at a property nearer the school from which the application is made. There is no concern with these circumstances being treated as a reason for casting doubt on the accuracy or completeness of an application which lead to a requirement for additional evidence, but as an absolute requirement which does not allow for a family to provide evidence that, despite this, the home address given is genuine is likely to be found unfair.

25. All objections to admission arrangements are considered on a case by case basis and on their merits. However, it may help to say that adjudicators are likely to find it reasonable and fair for an admission authority to set out a number of circumstances which would cause it to presume that an address is not genuine. This could be short tenancy or the retention of another property more distant from the school.

The applicant could be invited to provide further evidence to rebut that presumption. The admission authority can then consider whether the evidence provided by the applicant is sufficient for it to overcome the presumption and to find as fact that the address given in the application is genuine. Conversely it may not consider that the evidence provided is insufficient to overcome the presumption and it will find as fact that the address given is not genuine.

26. I want also to say a little about the giving of **priority in schools with a religious character to children from other faiths or denominations** from that of the school and to those “of no faith”. It is quite in order for the admission authorities of schools with a religious character to give priority to children from other faiths, so long as in doing so they have regard to any guidance from their faith body and act in accordance with the Code provisions. The advice from the DfE on the Equality Act<sup>4</sup> also addresses this matter.

27. Where admission authorities do give priority to children from another faith or denominations, it is important that the criteria used are clear and objective. We have seen cases this year where criteria for the school’s own faith area clear but criteria relating to other faiths much less so. While I understand that faith bodies and schools with a religious character are reluctant to state how parents should demonstrate their commitment to other faiths, it remains a requirement of paragraph 1.37 of the Code that “admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.” It is unlikely to be sufficient to meet the Code with statements such as, “There are up to 10 places for other children whose families worship regularly in accordance with the tenets of other word faiths as certified by the faith leader”. This statement offers no definition of other faiths or what will be deemed regular worship. Different faith leaders may well come to different conclusions regarding what is regular worship and so the criteria will not be clear and objective.

28. We have also seen examples of admission arrangements for schools in which

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/315587/Equality\\_Act\\_Advice\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/315587/Equality_Act_Advice_Final.pdf)

priority for some places is given to those “of no faith”. I pause here to note that this is entirely different from giving priority for places not on the basis of faith. Logically, in the former, the priority is restricted to those who have “no faith” whereas in the latter priority for the places takes no account whatsoever of faith or, indeed, its absence. Adjudicators are likely to find that giving priority to those of “no faith” is unclear and not objective and that it may also be unfair. This is because it is hard to set out clear criteria for assessing that a family or a child is “of no faith”. Finally, where admission arrangements give priority for some places on the basis of faith and for some places not on the basis of faith, it is important that they make clear how places in each category which are not filled will be treated, for example, that unfilled faith places will be added to the total available number of places to be allocated not on the basis of faith.

## Variations to determined admission arrangements of maintained schools

29. Once determined for the relevant school year, admission arrangements can only be varied, that is changed, in limited, specified, circumstances. An admission authority may propose a variation if it considers there has been a major change in circumstances and such proposals for a maintained school must be referred to the adjudicator. Proposed variations to academy arrangements are a matter for the Secretary of State. Some variations, for example to comply with a mandatory requirement of the Code, do not require approval by either the adjudicator or the Secretary of State as the case may be. This year we received two requests for us to approve variations that did not actually require our approval, but where the admission authority said that it would welcome our “confirmation” that the variations conformed with requirements. We had to explain that in fact we do not have jurisdiction to approve variations in such cases.

30. Following the very large numbers of cases received and dealt with last year as a result of Covid-19 numbers fell back to normal range – albeit that the numbers of requests for variations have been rising over the past few years.

**Table 3:** Variations to admission arrangements

Variation to admission arrangements	1 January 2021 – 31 December 2021	1 January 2020 – 31 December 2020
Total cases dealt with	128	1171
Approved	91	923
Approved/Approved with modification	8	211
Not Approved	14	19
Decisions outstanding	4	12
Out of Jurisdiction	2	2
Withdrawn	9	4

31. The largest group of variations related to requests to reduce PANs. In the period

covered by last year's report (which of course was 16 months) we received 86 proposals for variations to reduce PANs<sup>5</sup>. In 2021, we received 91. I have commented in the past to the effect that ideally reductions in PANs should be done via the normal process for determining arrangements so that there is consultation and the scope for people to comment and object not through variations. Indeed, objections were made in this reporting period to reduced PANs and a number of those were upheld as I outline in paragraphs 15-19. Against that background it is only fair to note that in 2021 we received a number of requests for approval of variations to reduce PANs accompanied by clear indications that numbers had fallen significantly and unexpectedly. Where the number of children who either have sought a place, or are expected to do so, is well below the PAN, then it is quite understandable that a school will wish to organise its staffing and class structure according to that lower number of children. For reception classes, schools will also be conscious that the admission of further children may require it to deploy a further teacher in order to comply with infant class size regulations.

32. Not all requests for variations to reduce PANs were fully justified. In one case a local authority had requested variations to reduce PANs across a number of primary schools in one planning area. This was part of a reorganisation from a three tier to a two tier system. The reduced PANs requested (in some schools from 36 to 10) would have resulted in a PAN for some schools far below recent admission levels and far below anticipated parental demand for places for the next few years. The local authority stated that this would allow it the flexibility to exercise judgment rather than having to follow "rules". A school's PAN should not be set artificially low in order to give the admission authority flexibility. An artificially low PAN will be misleading for parents and will not comply with the requirements of Paragraph 14 of the Code. In the case of a school fully or well subscribed at the higher original PAN it may also lead to objections the following year from the governing board to which the Code's strong presumption in favour of an increase in PAN would apply. The requested variations were approved with modifications in each case to give a PAN which more accurately reflected the capacity of each school taking account of the year groups being added.

33. Apart from proposed reductions to PANs, other reasons for proposed variations included changes to catchment areas following the closure of another school; a request to remove a selective stream from a secondary school and for a secondary school which had amended its arrangements previously to offer places for children of primary school age a request to revert to its earlier "relevant age group" being Year 7, having had no applications for primary places. Finally, there were some further requests from schools with a religious character for variations in the light of continued restrictions on public worship in the light of Covid-19. Last year, I explained that in dealing with the very high number of variations related to the effects of Covid 19 pandemic, adjudicators did not consider the arrangements as a whole due to pressure of time and therefore were not in a position to note whether they complied with the requirements relating to admissions or

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<sup>5</sup> 65 in the academic year 2019/20 and 21 in the four months from 1 September – 31 December 2020.

not. This year, we returned to our normal practice of considering arrangements as a whole.

## Directions to maintained schools to admit a child and advice to the Secretary of State on requests to direct an academy to admit a child

34. Under Sections 96, 97, 97A and 97B of the School Standards and Framework Act, the admission authority for a maintained school may, in certain circumstances, refer to the adjudicator notification by a local authority of its intention to direct the school to admit a child. The number of new such cases in 2021 was six. Six cases were completed in year and one was carried forward. If a local authority considers that an academy would be the appropriate school for a child without a school place and the academy does not agree, the local authority may make a request to the ESFA to direct, on behalf of the Secretary of State, the academy to admit the child. In such cases, the ESFA may (again on behalf of the Secretary of State) seek advice from the adjudicator. Last year I explained that the ESFA had decided to seek the adjudicator's advice in more cases where local authorities asked the ESFA on behalf of the Secretary of State to direct an academy to admit a child. The number of new such cases referred to the OSA in 2021 was 22 and one had been brought forward from 2020. We completed 22 cases in year so again carried one forward to 2022.

**Table 4:** Directions to schools to admit pupils and advice to the Secretary of State on requests for a direction to an academy

	1 January 2021 – 31 December 2021	1 January 2020 – 31 December 2020
Total cases considered	30	38
Maintained schools – decision to:		
• Admit the child	1	2
• Not admit the child	0	0
• Direct to another school	0	0
Advice to Secretary of State to:		
• Admit the child	12	17
• Not to admit the child	1	13
Out of Jurisdiction	1	2
Withdrawn	13	2
Decisions outstanding	2	2

35. For maintained schools in relation to children who are not looked after, a direction



can only be made by the local authority where that child has first been refused admission to or permanently excluded from every school within a reasonable distance of the child's home. It is not enough for the child to have been referred to and considered under the local Fair Access Protocol (FAP). In this context, I was disappointed that in some cases the local authority had not followed the proper process with the result that the adjudicator did not have jurisdiction to consider the case. Most of these cases were then withdrawn by the local authority when the question of jurisdiction was raised and are therefore included in the number shown as withdrawn above. A further case was withdrawn as, having decided to make the direction, the local authority then decided that the child should be assessed for an Education, Health and Care Plan (EHCP) and a suitable school identified as part of that process.

36. Eight of the requests for advice on directions to academies concerned looked after children and in all of these cases the local authority looking after the child wished an academy in another local authority area to admit the child. All concerned secondary aged children. Four of the cases were withdrawn because the school concerned agreed to admit the child and in four the adjudicator recommended that the academy should admit the child. For the 14 academy cases relating to children not looked after on which a decision was reached in year, in eight cases the adjudicator recommended that the child should be admitted to the academy concerned and in one case that the child should not be admitted to that academy. Five requests for advice on whether the Secretary of State should direct an academy to admit a child were withdrawn because the academy agreed to admit the child after the request for a direction was made. In at least two cases the admission authority said that it was unaware that the local authority was seeking a place.

37. All direction and direction advice cases are given the highest priority by OSA staff and adjudicators as they involve children and young people who may be missing education. In most cases, the local authorities and schools concerned respond speedily to our enquiries and provide the information we need to make timely decisions or to give timely advice as the case may be. Against that background, I am sorry that I need to report that in some cases it has taken far too long to secure the information the adjudicator needed from schools and from local authorities. In one case, the adjudicator was told that some information could not be provided because fair access panel meetings were not minuted. We have also in some cases seen evidence of what appears to be imprecise application of the local authority FAP, such that decision-making is not fully transparent. Local authorities need to ensure that FAPs are set out and applied in objective terms only if they are to have the confidence of all schools in their area.

## **Discontinuance and establishment of and prescribed alterations to maintained schools**

38. The number of statutory proposals referred to the OSA by the local authority was five. In three of the cases, proposals were referred to us because the local authority concerned had failed to make the decision itself within the statutory period allowed for this. The local authority subsequently exercised its right to withdraw the proposals. A

case of interest was a referral from a voluntary controlled infant school against the local authority's refusal to approve a proposal to allow the school to extend its age range in order to become an all-through primary school. Due to declining numbers of applications and other factors, the school was sustaining financial pressures which had led to a budget deficit. This was predicted to worsen year-on-year going forward. The proposal presented a solution to the school's financial problems. There was overwhelming support for the proposal locally but the local authority declined to give approval principally due to concerns about the effect upon another local primary school of 'losing' pupils who would otherwise have been admitted at Key Stage 2. The local authority acknowledged that its decision had been finely balanced. The proposal was self-funding; complied with all relevant statutory requirements; presented clear educational benefits for local children and their families; and would solve the school's financial problems. The detrimental effect upon the other local primary school was not inevitable as it was open to the local authority to take steps to ameliorate that effect which could, in turn, bring educational benefits to local children and their families. The adjudicator approved the proposal. The final statutory proposal was a request for a modification of a previously approved proposal and this was approved.

## **Land matters for maintained schools**

39. We dealt with two land transfer cases in 2021. Both cases related to the same local authority and the same school foundation. In both cases there was in fact no dispute about the land that was to transfer to the schools' foundation on their change of character to foundation and the land concerned had transferred by operation of law and this had happened several years ago. The local authority had failed to take the steps necessary to register the transfer of the legal title to the land as they were required to do. The foundation came to us because one of the schools wanted to enter into a lease with a third party but was unable to prove title to the freehold. In response to the foundation's request, the adjudicator exercised her power to certify that the land had transferred.

## Part 2 – Summary of local authority reports 2021

40. I am happy to be able to begin this section of my report by noting that every local authority returned a report to the OSA this year. Last year, a number of local authorities did not send a report and, given the pressures on local authorities dealing with the Covid-19 pandemic, I decided not to pursue the matter. This year, 109 reports were submitted by the 30 June deadline and all had been received by 9 September 2021.

41. During the period when local authorities were preparing and submitting their reports, the DfE had laid before Parliament, on 13 May 2021, the new Code which it had consulted on in 2020 and which came into force on 1 September 2021. While the new Code did not therefore apply during the period covered by the local authority reports summarised here, many local authorities commented on what they expected the impact of the new Code to be. Most that did so welcomed the changes with one saying, for example, “We welcome the greater emphasis and new provisions on in-year admissions, in the Admissions Code 2021.... the changes will help to further streamline the process, and clarify roles and expectations.”

42. As in past years, where local authorities expressed concerns about school admissions, these related most often to in-year admissions rather than to admissions at normal points of entry. Moreover, again as highlighted in previous reports, those concerns related particularly to the admission in-year of vulnerable children and those with challenging behaviour. In this context, some local authorities thought that the changes in the Code would not tackle in full the problems and challenges they identified. A number said, as in previous years, that they would prefer a return to mandatory co-ordination of in-year admissions by the local authorities. A number made specific suggestions for changes and these are reflected in the following paragraphs.

43. A number of local authorities also commented on the benefits they believed to have flowed from the use of virtual appeal hearings for admissions. At the time of completing this report, the DfE is consulting on a new School Admissions Appeals Code which will allow for the continued use of virtual appeals. I know that this will be welcomed.

44. There is one further general point I want to make early in this section of the report. In my reports for September 2018 to August 2019 and September 2019 to 31 December 2020, I addressed a concern raised by some local authorities that establishing whether a child was or had been looked after by a different local authority was made difficult by, in the words of one local authority cited in the 2018/2019 report: “difficulties [relating] to obtaining clear verification of LAC/PLAC [looked after child /previous looked after child] status from other authorities due to GDPR and staff availability”. I noted in both reports that the Data Protection Act and UK GDPR does not create barriers to information sharing in such circumstances, and that there are already clear expectations on corporate parents to act in the best interests of children for whom they are responsible, and so they should share information about them in a timely fashion where this is necessary in order to fulfil this expectation.

45. Against this background, I was disappointed to read in one local authority's report of the challenges it faced in relation to data sharing, in this case for the purposes of in-year admissions rather than determining a child's looked after or previously looked after status. The local authority reported as follows:

"Schools are facing issues around the sharing of information from the home school when an in-year application is made. Schools cite the reason for a reluctance to share information is about being compliant with GDPR.

In [our area] we have experienced that due to the above, schools are not getting enough information about a child's challenging behaviour history and therefore cannot refer into FAP and have to admit. Following admission, schools then discover there have been long standing issues with behaviour and the implementation of sanctions from the previous school."

46. The local authority told me that it consulted its own Data Protection officers who had - rightly in my view - confirmed that sharing information between schools is not prohibited by data protection legislation. The local authority suggested the further guidance from the DfE on the proper scope for sharing information between schools would be useful. I have forwarded the comments to the DfE for consideration.

## **Admission arrangements in the normal admissions rounds**

47. As in previous years, an overwhelming majority of local authorities have reported that the co-ordination of admissions at the normal points of entry has worked well with only a few small problems, or very well. One told me that:

"All statutory deadlines were met and, despite the difficulties created by COVID 19, the process ran smoothly. Outcomes for families were good with a high proportion of children receiving a first preference offer (approximately 9 in 10)."

48. Several local authorities told me that a very high proportion of parents received an offer of a place on national offer day, many at their highest preference school. London Boroughs in particular have again pointed to the success of the Pan-London co-ordination process. One local authority told me that there has been a 7 percent decline in applications for Reception places and a 0.4 percent decline for Year 7 places across the capital compared to 2020.

49. In terms of the percentage of local authorities which have reported the different levels of success, the following table shows that there has again been an increase in the proportion reporting that the process has either gone well, or very well, compared to the 2020 admission round, although for Year 7 this picture remained approximately the same as in 2020. As explained, above, more local authorities submitted reports this year than did so last year. While this makes direct comparisons of the number of authorities

reporting in each category difficult, it is still possible to compare the proportion of the authorities who did so, as shown in Table 5 below<sup>6</sup>.

**Table 5:** Percentage of local authorities reporting how well co-ordination worked in each category in 2021 (2020 figures in brackets)

	Not well	A large number of small problems or a major problem	Well with a few small problems	Very well
Reception	0	0.7 (0.7)	19(25)	80 (74)
Year 7	0	2 (1.4)	31 (26)	67 (72)
Other years of entry (where relevant)	0.8 (0)	0.8 (0)	17 (19)	82 (79)

50. For admissions to Year 7, there was a slight increase compared to last year in the proportion of local authorities which reported a few small problems. Comments which these local authorities have provided were focused on three main areas of concern: other admission authorities which needed additional support or which did not provide accurate and timely information, other local authorities with which there were difficulties or delays in exchanging information and the effect of Covid-19.

51. By the time of the first national lockdown because of Covid-19, much of the work involved in admissions at the normal points of entry for 2020 had already taken place. For 2021 admissions, however, there were restrictions in place for a significant part of the time from September 2020 through to the late spring and early summer of 2021 during which testing and the work of co-ordination generally had to take place. Given the potential disruptive effect of the pandemic for 2021 admissions, it is a tribute to all concerned that local authorities have been able to report the very largely successful process set out above.

52. The Covid-19-related issues specific to Year 7 admissions arose from the need to delay pupil testing arrangements in areas where there is secondary selection, and the knock-on effects of this. One local authority put it like this:

“Year 7 - The delay to the grammar school entrance examinations..... caused a considerable amount of uncertainty for parents that could not know the outcome of

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<sup>6</sup> It should be noted that those local authorities that reported last year may not be representative of all local authorities. This means that the comparisons between this year and last year should be treated with caution.

their assessment before they made their applications. The LA made arrangements for parents to submit up to 8 applications instead of the usual 5 so that every option might could be expressed. However, the delay did mean that a number of children, that would not usually be included in the cohort (children attending Independent Schools seeking grammar places that were not subsequently successful), were allocated high school places at state funded schools that they did not finally accept. Although these rejected places did free vacancies for the review rounds, children that might have achieved those places on national offer day were unlikely to receive those places in any review round.”

53. Other local authorities reported that there were additional administrative burdens caused by the need to organise alternative testing arrangements for the large numbers of children sometime involved in selection testing in parts of the country, and also that the need to give parents a later closing date where there was selection testing created considerable difficulty in keeping to national deadlines.

54. A small number of local authorities said that they had experienced an observable general increase in parents who failed to express their preferences by the national deadline, and attributed this to the effect of the pandemic, because of lockdown. Two told me that they had “chased” parents in order to secure the information they needed to run the admissions process.

55. Many local authorities took the trouble to explain how potential problems of Covid-19 have been overcome more generally, again frequently citing improved ways of working in comments such as:

“The staff ensured that the changed arrangements [working from home] did not in any way detriment the service we offer to parents and schools. The Parent Portal enabled most parents to apply online and receive offer emails/links to appeal process. Enquiries were directed primarily to emails to enable swift accurate guidance and support to parents. The School Portal supported our partners in schools to view applications, rank where necessary and view offers. The online processes were well supported by the Admissions Team and our technical support team.”

and

“Similarly, the coordination of Secondary Transfer applications went smoothly with residents and the team managing complex issues via telephone and email rather than face to face. Systems and processes proved to be robust and resilient both in relation to ICT infrastructure and handling of all admission applications online rather than paper.”

56. Several local authorities pointed to the importance of there being good cooperation with schools and the willingness to operate flexibly by all concerned. One said:

“There has been excellent communication between all admission authorities and the local authority, with all information being exchanged within the agreed timescales. This is despite the additional challenges presented due to the Covid-19 situation and the impact of this on the administration of both the Year 7 and Reception Class allocations. As a result of schools and the local authority having to be creative and adapt to the environment created by Covid-19, we continued to explore alternative ways of working to minimise the level of administration required. However, what we have found is that any alternative ways of working have not actually had a significant impact in reducing the administration burden - it has just been a case of replacing one administrative method with another.”

57. Putting aside the specifics of the Covid-19 pandemic, in addition to the success reported for the Pan-London scheme, a number of local authorities mentioned an increased use of on-line or automated systems when describing the success of co-ordination in 2021, for example:

“Well established working relationships with our neighbouring LAs and with other admitting authorities operating within our area aid the smooth operation of this process. Systems have been developed to ensure that the vast majority of the process is automated.”

and

“Parents and carers were encouraged to apply online and on time. A very high percentage did so in the Reception and Year 7 transfer groups. This minimises the number of late applications which put children at risk of popular schools filling up.”

58. As was the case last year, local authorities were not asked to comment specifically on the effectiveness of the ranking of preferences by schools that are their own admission authority. However, many again chose to do so. There was an approximate balance between the number of local authorities who told me that they had particularly good working arrangements with other admission authorities in their area, and the number which pointed to there being difficulties. These difficulties mirrored those reported by local authorities last year and consisted mainly of the late provision of ranking data, the incorrect application of schools’ oversubscription criteria and, again in a few cases, examples of schools making offers to parents themselves outside the coordination process. Several local authorities said that they invested time in checking the rankings provided by all other admission authorities in their area in order to be sure that they could run the coordination process efficiently. One said:

“Schools do not always provide the information by the specified date, and on occasion do not fully understand their own admission policy. This adds to the timescale and can hinder effective cross border co-ordination. Schools must work with the LA to ensure information is updated and accurate. As more schools become academies, officers need to give more support to these schools, even

though we are not specifically funded for this, to ensure that they provide accurate information in respect of admission criteria.”

59. Some local authorities have again reported difficulties associated with the transfer of information with their neighbouring local authorities, and one has repeated the request that there should be a national deadline for the exchange of information to aid this process. A number have again reported that there is poor coordination, particularly across local authority boundaries, between the admissions process and the timetable for the issuing of Education, Health and Care (EHC) plans. Some have reported “holding” places during co-ordination until decisions about EHC plans have been made, and one has suggested that neighbouring authorities should be required to work via their authority special educational needs and disability (SEND) process, rather than contact schools in their area direct, in order to improve co-ordination between these processes.

60. It is greatly to be welcomed that local authorities have again reported that the needs of looked after and previously looked after children are either well, or very well, served at the normal points of admission. As above, I am reporting in terms of percentages to take account of the fact that all local authorities submitted a report this year but not all did so last year. This is shown in Table 6.

**Table 6:** Percentages of local authorities saying looked after and previously looked after children are either well served, or very well served at the normal points of entry (where relevant to themselves)

	2020 Well	2020 Very Well	2021 Well	2021 Very Well
Looked after children in home LA	7.2	92.8	6.1	93.9
Looked after children in another LA	24.8 (not well/well)	75.2	24.7 (not well/well)	75.3
Looked after children from another LA	10.9	89.1	8.1	91.9
Previously looked after children	11.6	88.4	12.2	87.8

61. For looked after children admitted to a school in the reporting local authority, whether the authority itself is the corporate parent or whether this is another local authority, the perception is that needs have been better met than in the previous admission round, continuing the upward trend. By contrast, the view of how the needs of the reporting local authorities’ own looked after children have been met by other local authorities has remained the same as last year, with this being significantly less favourable than authorities’ views of their own performance. For this group of children, a



very small number reported again that needs had not been well met by other local authorities.

62. For previously looked after children, there has been a slight reversal of the relative improvement reported last year, with a higher (albeit still low) proportion of local authorities saying that needs had only been well met as opposed to very well met. A number of local authorities again expressed the view that they had had problems in establishing the status of previously looked after children, and again that this was often particularly difficult if the child's corporate parent had been another local authority. One local authority took the view that the Code did not provide a sufficiently clear guide to establishing the status of a previously looked after child, but did not elaborate on this.

63. Approximately one in five local authorities took the trouble to comment positively on the role played by their Virtual School in ensuring that looked after and previously looked after children are well served, either within their own authority or across local authority boundaries. One told me:

“There is a designated Admission Officer as the point of contact for children in care, working closely with colleagues in The [name] Virtual School. This relationship fosters good communication between services to ensure that Social Workers and Foster Carers are aware of deadlines to maximise the number of applications made by the closing date. Queries are answered quickly and appropriate action taken following a change of circumstances”

and another that:

“Good practice – admission team ..... share applications received two weeks prior to close of admission round window [with] the Virtual School. The Virtual School link and liaise with social care colleagues as a prompt to remind them of admission deadline date. The Virtual School Placement officers can support carers/parents and social worker with advice on schools to support informed choices for parental preference.”

64. Some local authorities have again reported that all schools in their area give first priority to all looked after and previously looked after children. A larger number told me that all children in this category in their area were allocated a place at their first preference school and it was again heartening to read about the welcoming and accommodating approach of many schools.

65. There were, however, a small number of concerning reports of a less constructive engagement on the part of schools and local authorities, as shown in the following:

“The admission processes within our local authority are robust and our internal processes ensure that all decisions are made well within timescales. Unfortunately, this is not always the case when dealing with other local authorities and there remains considerable drift and delay in some areas.”

66. Also, a small but significant number of local authorities have again explained the difficulties which can occur if a high proportion of schools in their area which are good and outstanding have a religious character. Where this happens and those schools opt (as they are entitled to do) to restrict the highest priority to looked after and previously looked children of their own faith followed by other children of their faith, this can make it very hard or impossible for looked after or previously looked after children not of the relevant faith or faiths to secure a place in a good or outstanding school. One put it like this:

“Despite Diocesan guidance that best practice is to place all LAC/PLAC in the top criterion regardless of faith, we still have a number of Catholic schools that choose to split their LAC/PLAC criterion. As our Catholic high schools are oversubscribed ..... this means that non-faith LAC/PLAC are unable to access these schools. As one of these schools is the only Ofsted rated Outstanding secondary school in the City, this mean that non-faith LAC/PLAC are disadvantaged. Places can not be offered at offer day, and the Virtual Head of the responsible LA has to pursue conversations with the school and potentially Direction in order to get those pupils admitted for the September start. This creates further uncertainty for these vulnerable young people when all their peers have confirmed school places.”

67. The new Code has extended the same level of priority for looked after and previously looked after children to 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. In responding to my request for any comments concerning the admission of such children in the 2021 admission round, all local authorities were aware of the consultation. As I note above, they will also have known that the revised Code had been laid before Parliament but it was not in force when most submitted their reports.

68. On this specific change, however, it is possible to report a clear broad picture provided to me across local authorities, as almost all responses fell into a limited number of categories. It was very commonly the case that local authorities simply wanted to let me know that they intended to comply with the expected change as far as the schools for which they were themselves the admission authority are concerned, and to ensure that the admission authorities for other schools were advised of the need to do so. Large numbers of other local authorities told me that they had already included provision for this group of children in their own admission arrangements for 2021 admissions in advance of the approval of a new Code. These local authorities occasionally told me that all other admission authorities in their area had taken the same step, or more frequently that none, or only some, had done so.

69. Some local authorities took the opportunity to tell me that they had had no requests for a school admission from this group of children, but more were keen to say that they welcomed the impending change as a significant contribution to equity within the school admissions system for a vulnerable group of children which they recognised.

70. The report of the responses of local authorities to the DfE consultation on the proposed change to the Code which was published when the proposed new Code was laid before Parliament said:

“Of the 42% of respondents that do envisage problems making this change, 84 had concerns about how a child’s status would be evidenced, how state care might be defined in other countries, or possible fraudulent applications.”

71. Unsurprisingly, this was also the import of another large group of local authority responses to me, which either emphasised the need for there to be guidance from the DfE on this matter, or welcomed the promise of guidance being issued in the Government response to the consultation, depending on when they were made. Guidance for admission authorities and local authorities which specifically addresses the concerns expressed in the consultation was issued in July 2021, and it will no doubt be a feature of the responses from local authorities concerning the next admissions round as to how well this is considered to have operated.

72. A number of local authorities also made some very constructive suggestions for how the operation of the normal admissions round might be made to work even better. Any such changes would be a matter for the Secretary of State and Parliament, but I record them here as they strike me at any rate as potentially useful and worthy of consideration. First, some local authorities suggested the introduction of national dates for the exchange of information between all local authorities as part of co-ordination. This would build on existing practice across London and some other groups of local authorities. In this context, ten individual local authorities this year noted that problems had occurred when neighbouring local authorities had not exchanged data by locally agreed deadlines.

73. As last year, local authorities were asked if they wished to make any comments about the admission of children with special educational needs or disabilities (SEND) at normal points of admission, and again the great majority did so. The mixed picture which I reported last year was very largely repeated in this year’s replies.

74. As has been the case for a number of years, the majority of local authorities told me that the needs of children with SEND are well served by the admissions system, and very many were keen to say that this was achieved through close liaison between their special needs and admissions teams and the willing cooperation of schools. Some local authorities have developed dedicated teams which take responsibility for ensuring that there is good coordination between all those involved so that the need for school places for this group of children is given the appropriate priority, and they say that this works well.

75. By contrast, a group of other local authorities expressed their continuing concern about the difficulties that result from what they see as the late deadline for the finalisation of revised EHCPs of 15 February, given that the national offer date for Year 7 admissions

is 1 March. Some report that teams in their own authority do not meet the 15 February deadline, and a small group this year told me that this problem had been made worse because of Covid-19, presumably because of staffing and other difficulties resulting from the pandemic. Several local authorities asked for the 15 February deadline to be brought forward in order to reduce the need for schools to have to admit over-PAN to Year 7 when they are named in EHCPs which, for whatever reason, have not been finalised by the national offer day.

76. Some local authorities have complained to me about the consequences when neighbouring local authorities name schools in their own area in an EHCP without having informed them of their intention to do so, meaning that their own admissions teams will be unaware that these school places will be taken up in this way. There have been suggestions that it would be better for such admissions to take place only through the school's "home" local authority.

77. The picture which I reported last year of local authorities differing significantly in their approach to the admission of children with additional needs who do not have an EHCP has also been repeated. There continues to be a divergent approach between those local authorities which encourage the use of oversubscription criteria such as "medical/social" or "vulnerable children" to secure their admission, and others which take the view that schools (both those for which they are the admission authority and the others in their area) should not have any regard to such matters in the admissions process.

78. It is disappointing to have to report again that a small but significant number of local authorities have told me that some schools are unwelcoming to parents of children with SEND and that some schools seek to resist their admission, even when the school has been named in an EHCP and in spite of this being a mandatory requirement of the Code. There has again been some reporting of an increased desire on the part of parents for specialist as opposed to mainstream schooling, and some have reported this year that more parents of children in early years have sought an EHCP assessment because they believe their child has suffered an educational deficit as a result of the disruption caused by the pandemic.

## Admission other than at normal points of entry (in-year admissions)

79. I think it right to begin this section by repeating the point made in paragraph 41 that local authorities have broadly welcomed the provisions relating to in-year admissions in the new Code. Many contend these will clarify relative roles and responsibilities and provide a much needed timetable for publishing information, the timescale for decision making and notifying the local authority about the outcome of applications. Against that, the reports made in relation to the admission of children in-year continue to raise a number of issues which concern me, from the processing of applications to the criteria taken into account when making decisions on admissions. I also want to comment again on 'capping' which I raised in last year's report.

### Co-ordination of in-year admissions

80. Of the 129 local authorities which commented on co-ordination, over half told me that they co-ordinated in-year admissions for all or the majority of schools in the area. For those which did co-ordinate they set out the advantages for doing so including the benefits of timely decision making especially for parents, the ability to identify children out of school with a focus on safeguarding vulnerable children, access to accurate data to determine which areas have pressures on school places and transparency and consistency of advice. Some authorities thought it was regrettable that the new Code had not introduced the requirement for local authorities to co-ordinate in-year admissions for all schools. They were concerned that parents may not be receiving information about the appeals process including the reason why an application was turned down. One said:

“We consider an opportunity was missed when the revised Code did not make it a statutory requirement to co-ordinate the in- year process.”

81. The ability to access real-time data for in-year applications was seen as essential to ensure that local authorities had up to date information about where places were across all schools. Co-ordination also provided a centralised point of contact. There was some concern that academies would be challenged in meeting the deadlines set out in the revised Code.

82. For those where there is little or no co-ordination the main argument for allowing schools to handle applications was that it removed a layer of bureaucracy both for parents and for schools. However, there continues to be a concern that some schools are not notifying local authorities about the outcome of applications which clearly results in inaccurate data held by local authorities about available places in their area.

83. A number of local authorities commented on the introduction of software including online application forms to streamline the process with fully automated data exchanges.

## Looked after and previously looked after children

84. Table 7 sets out a summary of the responses to my questions about how well the admissions system meets the needs of looked after and previously looked after children when they need a place in-year. The returns in this area covered a very wide number of issues including looked after and previously looked after children who also had special needs (with or without an EHCP) and schools saying they are 'full'. Although many authorities reported good practice with strong arrangements and good working relationships with schools, there were clear areas of concern particularly around the information that local authorities and schools receive either in advance of an application or in the application form itself. Lack of information can delay the admission of children while some schools seek information from previous schools.

85. Many local authorities have undertaken interesting projects to tackle some of the complex issues in this area. One authority wrote about their work:

"We have written a social care, foster carer and designated teacher handbooks this year with a section providing advice, guidance and expected good practice around in-year admission applications.

Senior staff from School Admissions and the Virtual School Head Teacher will be jointly delivering briefings to school leaders, admissions officers, SENCOs and DTs around best practice for children in care and school admissions."

86. A number of local authorities commented on challenges where places were sought in-year for children looked after by another local authority including because of different processes in different areas and different interpretations of the statutory guidance. A number of authorities told me about looked after children being relocated without any pre-planning. This was considered particularly problematic where the children concerned were in Year 11. As one put it:

"Other LAs often relocate children at short notice with no prior planning and specifically to access alternative provision..... It is of concern when looked after children arrive from other areas with no prior consideration or discussion about educational provision."

**Table 7:** Summary of responses in relation to specific groups of children and how well served they are by in-year admissions

	<b>Not at all</b>	<b>Not well</b>	<b>Well</b>	<b>Very well</b>	<b>Not applicable</b>
Looked after children	0	1	32	116	1
Children looked after in other LA areas	1	14	81	49	5
Looked after children from other LA areas but educated in your area	0	3	45	99	3

	Not at all	Not well	Well	Very well	Not applicable
Previously looked after children	0	2	45	100	2

Note: Even allowing for a higher number of returns this year, there was a relative increase from the well to the very well categories.

#### Children with special educational needs and/or disabilities

87. Table 8 provides a summary of the responses to my questions about how well the in-year admissions system deals with children with special educational needs and/or disabilities, both with an EHCP and those who do not have a plan. Local authorities have reported a very wide set of practices and experiences in what some tell me is an increasing number of children both with and without an EHCP. I note also more reports about children arriving in the UK with unidentified complex needs and this is now a trend over the past few years.

88. It is clear that some schools express reservations about the admission of children with additional needs but these concerns are mostly about funding pressures or where there are already high levels of need in the relevant year group. Some authorities place children who have special needs or disabilities but do not have EHCPs via FAP so that they secure places quickly and with a bespoke package of support.

89. The good working relationship between the admissions and inclusion teams within and across local authorities is seen as critical in devising the best route to provide good and appropriate support to children with additional needs. It is clear that this remains a challenging task for local authorities.

**Table 8:** Summary of responses in relation to children with special educational needs and/or disabilities and how well served they are by in-year admissions

	Not at all	Not well	Well	Very well	Not applicable	Don't know
Children with an EHCP	0	6	55	85	4	0
Children who do not have an EHCP	0	6	82	58	0	2

Note: Although there have been more returns this year, there has been a marked increase in the category of local authorities considering children with SEN with and without EHCPs were served “very well” compared to last year.

#### Fair Access Protocol

90. Every local authority **must** have a FAP, agreed with the majority of schools, in place to ensure that, outside of the normal admissions round, unplaced children,

especially the most vulnerable, are found and offered a place at a suitable school quickly. A number of authorities reported that they were reviewing their FAPs in the light of the new Code. Of the four local authorities which reported that their FAPs were not agreed, two were reviewing the FAP for primary schools, one was putting together a FAP for primary schools for the first time, and one was reviewing for both primary and secondary schools. All four local authorities expected to have FAPs in place shortly after sending the return.

91. Table 9 shows the number of admissions reported by local authorities made using the protocol in the financial year of this report. The numbers vary widely between local authorities even taking account of the size of each authority. Even with more local authorities sending a return this year there has been a large drop in the number of primary and secondary aged children admitted under the FAP because of fewer exclusions and school closures due to Covid-19. Local authorities have recorded an increase in the very well category in how they considered hard to place children are served by the FAP compared to last year.

92. I want to draw attention to two areas which were raised frequently in the reports: “an increasing challenge from schools that perceive they are taking an unfair share of challenging pupils”; and schools either saying they were full to PAN or had reduced the PAN for year groups other than the relevant year group without consultation with the local authority. This is another area where I am concerned about the misunderstanding that the PAN only applies to the relevant year group not for all year groups and I have set out in paragraph 19 what the PAN does and does represent. In some cases, local authorities reported that the schools with the most physical capacity were in those in special measures and there was concern that they would not be the schools best placed to cater for the most vulnerable and/or challenging children.

**Table 9:** The number of children admitted to schools under the Fair Access Protocol between 1 April 2020 and 31 March 2021

Type of school	Primary aged children	Secondary aged children
Community and voluntary controlled	3,239	1,537
Foundation, voluntary aided and academies	3,065	7,868
Total	6,304	9,405



**Table 10:** Summary of responses on how well hard to place children are served by the Fair Access Protocol

Not at all	Not well	Well	Very well	Not applicable
0	5	53	84	84

## Other matters raised by local authorities

93. Around one third of local authorities took the opportunity to raise a variety of issues with me including elective home education, infant class size appeals and the failure of some schools to notify the local authority about new admissions or children who have left. But the two issues raised frequently and in some detail were summer-born children and on-line admission appeals. A number of local authorities have expressed disappointment that provisions for summer born children were not included in the consultation on the new Code.

“The summer born guidance remains very difficult for Local Authorities and Admissions Authorities to administer. It is useful to have parents’ guide to share. However there is still a concern that parents are making the decision without full understanding that they may not be allocated a place at their preference school the following year either for Reception or Year 1.”

94. One authority reported that some admission authorities have not made provision in their admission arrangements for summer-born children and commented that a new Code could have resulted in a “more consistent approach and greater clarity for parents.” They told me that parents often interpret guidance as giving them the right to choose which year group they wanted for their child, Reception or Year 1. One authority dealing with education outside the normal age group referred to it as a “Hot Button issue”.

95. It was encouraging to hear about the virtual admission appeals which authorities put in place during Covid-19. As well as enabling the appeals to be heard remotely thus protecting families, school and local authority officers and panel members, they had other benefits:

“There is a much reduced burden on parents – financially, time away from work and child care, travelling – and holding appeals virtually has meant they can be more relaxed and able to say what they want to say.”

96. This approach has enabled deadlines to be met and there is strong support for this approach to continue possibly with the addition of face to face appeals, where preferred, in the future. In addition, some authorities used virtual meetings for FAP meetings which meant that “vulnerable pupils have a transition pathway set up for them to access schools as soon as they were open.”

## Appendix 1 – The role of the OSA

97. Adjudicators exist by virtue of section 25 of the School Standards and Framework Act 1998. They have a remit across the whole of England. In relation to all state-funded mainstream schools, other than 16–19 schools, adjudicators rule on objections to and referrals about determined school admission arrangements. In relation to maintained schools, adjudicators: decide on requests to vary determined admission arrangements; determine referrals from admission authorities against the intention of the local authority to direct the admission of a particular child; decide some school organisation proposals; and resolve disputes on the transfer and disposal of non-playing field land and assets. The adjudicator can be asked by the Secretary of State for Education to give advice on matters relating to the admission of children to schools, including academies.

98. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. They look afresh at cases referred to them and consider each case on its merits in the light of legislation, statutory guidance and the Code. They investigate, evaluate the evidence provided and determine cases taking account of the reasons for disagreement at local level and the views of interested parties. Adjudicators may hold meetings in the course of their investigations if they consider it would be helpful and could expedite the resolution of a case.

99. Adjudicators are independent of the DfE and from each other unless two or more adjudicators are considering a case together. All adjudicators are part-time, work from home and take cases on a 'call-off' basis, being paid only for time spent on OSA business. They may undertake other work when they are not working for the OSA provided such work is compatible with the role of an adjudicator. They do not normally take cases in local authority areas where they have been employed by that authority or worked there in a substantial capacity in the recent past. Nor do they take cases where they live or have previously worked closely with individuals involved in a case, or for any other reason if they consider their objectivity might be, or be perceived to be, compromised.

100. At the beginning of the period covered by this report there were ten adjudicators, including the Chief Adjudicator. Two new adjudicators were appointed by the Secretary of State in Spring 2021 bringing the complement to 12. Adjudicators are supported by a small team of administrative staff who are seconded from the DfE for this purpose. Following a number of years in which we have enjoyed great stability in this team, three out of the headcount of five either retired or moved to new roles in the DfE. We have been pleased to welcome three new members of staff - including a new Head of Secretariat - who have all settled very quickly and well into their new roles.

101. The OSA's costs in the financial year April 2020 to March 2021 were the same as in the preceding twelve months. However, the amount spent on fees increased and the amount spent on some other matters fell. The increase in the fees paid to adjudicators resulted from the very large number of cases we completed in the late summer to winter of 2020 when we dealt with over 1,000 requests for variations to determined

arrangements necessitated by the Covid-19 pandemic. I wrote about these in last year's report and noted then that the costs of these cases were not reflected in that report but would fall within the financial year covered by this report. Costs relating to meetings and to training fell dramatically as we held all meetings and training events in the 2020- 2021 financial year virtually.

102. The OSA receives legal advice and litigation support as necessary from lawyers of the Government Legal Department (GLD) and from barristers who specialise in education law. Adjudicator determinations are checked before publication by the Chief Adjudicator and, where appropriate, by GLD solicitors and/or by barristers. Determinations do not set precedents and each case is decided in the light of its specific features and context alongside the relevant legal provisions. Determinations are legally binding and, once published, they can be challenged only by judicial review in the Courts. In this reporting year, there were no applications for judicial review of adjudicator decisions and thus no determinations were challenged.

103. At the completion of each case, the OSA seeks feedback from all involved on how the matter was handled. This year 523 forms were sent out and 42 (which is eight per cent) returned. Most forms that were returned simply answered the questions asked by ticking the relevant boxes yes or no. These answers recorded in the great majority of cases that the respondents had understood the process, felt they had been kept informed and were satisfied with the process. Of those who provided comments, most were positive about the service provided and particularly the service provided by our secretariat. Some respondents raised concerns about the way in which their case had been handled. We responded direct where appropriate and continue to keep our processes under review and to make improvements where we can.

104. We received one formal complaint about the handling of cases over the period covered by this report which I considered but did not uphold. In a further two concerns were raised about the handling of cases. As a result of these, we are making some changes to our processes including to give more details of circumstances in which the identity of objectors may be withheld from other parties and when information may not be circulated and in consequence will not be taken into account by the adjudicator, making clear that this may include irrelevant as well as defamatory or offensive material.

105. As in previous years, we asked LAs for comments on the template used to collect information for part 2 of this report. Around 40 LAs commented. Only one said that they would prefer to revert to the previous, longer form and most found the template easy to use. A number said that they would prefer to submit data in relation to academic rather than financial years, so that they would, for example, report on the number of pupils admitted under the FAP in each academic year. Given the changes in the Code so that local authority reports will from 2022 be submitted by the end of October and cover academic years, this understandable request will be satisfied.

106. We received six requests for information that cited the Freedom of Information (FOI) Act in the period 1 January 2021 – 31 December 2021 and we had one request which we had brought forward from the last reporting period. All FOI requests received were cleared within the timescales required. Two requests received were forwarded to DfE to respond to as the information requested was not within the remit of the OSA.

## Appendix 2 - OSA expenditure 2020-21 and 2019-20<sup>7</sup>

### OSA Expenditure financial years 2020-21 and 2019-20

Category of Expenditure	2020-2021 £000	2019-20 £000
Adjudicators' fees	407	353
Adjudicators' expenses	2	12
Adjudicator training/meetings	0	48
Office staff salaries	163	163
Office staff expenses	0	4
Office Administration costs /consumables	0	1
Legal fees (including costs of subscription to legal database)	15	6
<b>Total</b>	<b>587</b>	<b>587</b>

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<sup>7</sup> Information relates to financial years 2019-2020 and 2020-21. The report covers the calendar year 2021 so far as it relates to the work of the OSA.

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Office of  
the Schools  
Adjudicator

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