Office of
the Schools
Adjudicator

Office of the Schools Adjudicator Annual Report

September 2015 to August 2016

November 2016

Contents

Introduction 3

Executive summary and main findings 4

Review of the year 2015/16 9

Admissions 12

- Objections to and referrals about admission arrangements 12
- Variation to determined admission arrangements of maintained schools 20
- Directions to maintained schools to admit a child 21

Discontinuance and establishment of, and prescribed alterations to, maintained schools 22

Land transfers for maintained schools 24

Summary of Local Authority Reports 2016 25

- Specific groups 25
- Co-ordination of admissions 29
- Fair Access Protocol 37
- Admission appeals 40
- Other issues 41
- Other issues - from local authorities 50

Appendix 1 - Background to the OSA 54

Appendix 2 - OSA Expenditure 2015-16 and 2014-15 55

Appendix 3 – Table Index 56

Introduction

This is my first report as Chief Adjudicator.

The report covers the period 1 September 2015 to 31 August 2016. I took up the post of Chief Adjudicator on 4 April 2016. Dr Elizabeth Passmore OBE was Chief Adjudicator until 29 February 2016 and Andrew Bennett served as Interim Chief Adjudicator from 1 March until 3 April 2016. Both Dr Passmore and Mr Bennett have kindly provided me with information about their work during their respective periods of office to help me ensure that this report properly covers the whole year.

This report covers the first year of operation of a new timetable for the determination of arrangements by admission authorities and for making objections to those arrangements. I say more about the effects of these changes later in this report but say now that the changes are to be greatly welcomed and serve parents well. I am glad that I can report that the new earlier deadline was well understood by objectors so we did not receive a significant number of objections after the deadline. The new timetable has allowed us to complete more cases before or during the summer holidays and this in turn meant that admission authorities could make any necessary changes to their admission arrangements in time for applications for places for 2017.

I have included a number of main findings and recommendations in this report. I hope that as the Secretary of State for Education and others take forward the plans for changes to the school system set out in the Green Paper Schools that Work for Everyone the findings and recommendations in this report may be of assistance. I also hope that it will assist admission authorities in their task of determining clear, fair and objective admission arrangements.

Shan Scott

Chief Adjudicator

Office of the Schools Adjudicator

30 November 2016

Bishopsgate House
Feethams
Darlington
DL1 5QE
Tel: 01325 340402

Email: osa.team@osa.gsi.gov.uk

Website: www.gov.uk/government/organisations/office-of-the-schools-adjudicator

Executive summary and main findings

1. **The number of cases** referred to the Office of the Schools Adjudicator (OSA) was lower than in recent years. Moreover, as this year was characterised by a number of objections to admission arrangements involving multiple objectors – as many as 48 in one case - the number of schools[1] which were the subject of referrals was lower still. The bringing forward of the date for determining arrangements and the earlier deadline for objections meant that the OSA was able to complete more cases before 31 August than in previous years and that any necessary changes to arrangements could be made before parents had to apply for places.

2. **Objections to admission arrangements** have continued to form the largest part of our work. More objections came from parents than from any other group. Objections covered a large number of matters including the selection of feeder schools, testing arrangements in grammar schools, faith based arrangements and catchment areas. As part of objections about the provisions of arrangements, complaints were made about inadequate consultation before changes were made to arrangements. In some cases, adjudicators have found that admission authorities have not paid proper attention to the School Admissions Code's (the Code) requirements in setting admission arrangements. In others, it has seemed that the basis of the objection lies in the objector's views rather than in any breach of the Code. During the year 73 objections were upheld; 70 partially upheld and 73 not upheld.

3. As the number of schools which are responsible for their own admissions grows, so can the range of different oversubscription criteria used to allocate places at schools in a particular area. It is right that admission authorities should choose the arrangements that are right for their circumstances and I have described later in this report some circumstances which call for particular types of arrangements. However, it is also important that parents should be able to understand how places are allocated at each of the schools they may be interested in their children attending and that the admissions system as a whole is easy for parents to navigate. Whatever the arrangements chosen, they must meet the requirements of paragraph 14 and be clear, fair and objective. Parents' and children's interests are only served when arrangements which conform with the Code are properly determined and then published so that parents can be well informed.

[1] In this report I use the terms school and schools to include academies unless the context calls for the use of academy or academies. I use the term governing body to mean both the governing body of a maintained school and, in relation to admissions, to include the academy trust for an academy which is not part of a multi-academy trust.

4. The OSA received fewer requests for **variations** to the determined admission arrangements of maintained schools than last year. The main reasons for seeking variations were to make changes which allowed schools to manage falling rolls more effectively.

5. The number of appeals against a local authority's notice of intention to **direct** a maintained school to admit a pupil was lower still than last year at seven in total. In two cases the procedure required by the Act had not been followed putting the matter outside the jurisdiction of the adjudicator. The Education Funding Agency (EFA) requested advice on behalf of the Secretary of State from the adjudicator for four cases in which a local authority had asked the Secretary of State to direct an academy to admit a child.

6. Four **statutory proposals** were determined by the adjudicator. This was fewer than in previous years. Two concerned the establishment of primary schools to replace separate infant and junior schools and one the expansion of a primary school from one to two forms of entry. The final case was a proposal to change the age range of an aided school and this was the only one not approved. The number of **land transfer** cases remained very small with four new cases received.

7. The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) and the Code require every local authority in England to prepare a **local authority report**.

8. The great majority of local authorities continue to report that in the normal admissions round the interests of looked after and previously looked after children, those with disabilities and special needs or who are vulnerable for other reasons are well served. They report some instances where individual schools seem to be less willing to admit such children but also robust approaches to tackling such occurrences. Some groups of vulnerable children (including asylum seekers, those with difficult family circumstances or returning to school having previously been excluded) may be more likely than others to need a school place outside the normal admission round. It seems that the system may not be quite so successful in meeting the needs of children here with the result that children spend more time out of school than they should. That said, local authorities also generally report that fair access protocols work well and do much to find a suitable place for children whose cases are referred to them. Very few cases require a direction by the local authority or the Secretary of State.

9. Seventy-five local authorities report concerns about fraudulent applications. Eighty-one local authorities reported that they withdrew some offers of places but the overall number of places withdrawn was very low at 267 given that well over a million applications for school places are processed each year.

10. Local authorities were asked about requests for summer born children to be admitted to the Reception Year once they reached compulsory school age; in other words, at the time when that cohort would normally be moving into Year One and on the number of such requests which were agreed. Not all local authorities collect data on this matter so robust year on year comparisons are not possible; but the information which is available suggests that the number of requests made and agreed continues to rise while remaining very small as a proportion of the total number of admissions of this age group.

11. The main findings this year reflect matters identified during adjudicators' consideration of cases and matters raised by local authorities in their reports. I highlight areas where I am concerned that children are not being well served or legal requirements are not being met. I also draw attention to areas where the system is working well and to instances of good practice by schools, local authorities and others noted during our work. I make some recommendations for the Department for Education (DfE) to consider.

Main finding 1. The new timetable for consulting on admission arrangements and for their determination and the new deadline for objections to admission arrangements has worked very well. The shorter prescribed minimum period for consultation has not prevented some very good consultations taking place. The earlier deadline for objections means that more cases were resolved in time for the admission arrangements for secondary schools to be revised where necessary before the deadline for applications for secondary schools of 31 October.

Main finding 2. Local authorities have a duty to object to the admission arrangements of any own admission authority school in their area if they are of the view or suspect that the arrangements are unlawful[2]. As the number of schools for which a local authority is not the admission authority grows, so does the importance and scale of this task. It is concerning, therefore, that eight local authorities were not confident that the arrangements of all schools in their area were lawful. Moreover, the data shows that while 686 sets of admission arrangements were queried across 63 local authority areas, 414 of those queries were raised by just seven local authorities. I consider that it is likely that in some parts of the country local authorities do not scrutinise arrangements adequately.

Recommendation. The DfE may wish to consider emphasising to local authorities the importance of scrutinising admission arrangements and consider whether they could work with representatives of local authorities

[2] This requirement is set out in paragraph 3.2 of the Code.

(especially those which appear to fulfil this requirement) to promote cost-effective ways of doing so.

Main finding 3. More objections this year have referred to the naming of feeder schools in oversubscription criteria. These have tended to be upheld where the selection of feeder schools, often at some distance from the school which has named them, has meant that children who live locally to the school who do not attend these feeder schools face a significantly longer or more difficult journey to alternative schools.

Recommendation. The DfE - working with other interested parties – may want to consider the case for guidance to admission authorities on how to maximise the benefits of feeder schools in terms of continuity of education and shared work across schools while ensuring that the selection of feeder schools does not cause unfairness to other local children.

Main finding 4. A number of objections have been made based on paragraph 2.9 of the Code which says that admission authorities **must not** refuse to admit a child solely on the grounds of a number of reasons including that the child applied later than other applicants or has missed entrance tests for selective places. An identically worded version of this paragraph was included in the 2010 Code but making clear this applied only to in-year admissions and not to admissions in the normal round. In the normal round, there are deadlines for applications and a requirement to take all reasonable steps to inform parents of the outcome of selection tests before that deadline. Local authorities and admission authorities rightly make provision to deal with unavoidable late applications or cases where a child is unable for good reason to take a selection test on the set day. However, there has to be a point at which the local authority can begin the work of co-ordination and at which the admission authority can begin to rank applications. Paragraph 2.9 without the caveat that it applies only to in-year admissions creates unfortunate ambiguity and has been used by some objectors to challenge admission authorities who have set reasonable deadlines for tests for selection and made sensible arrangements for late testing.

Recommendation. When the Code is next revised, if a provision equivalent to paragraph 2.9 is included, the DfE may want to consider making it clear that this relates only to in-year admissions.

Main finding 5. There are a number of different ways that admission arrangements for academies in multi-academy trusts (MATs) are determined. The MAT may determine the arrangements for all schools in the trust centrally, it may set parameters within which governing bodies of individual schools determine arrangements locally or it may delegate the determination

of arrangements to individual governing bodies entirely. Adjudicators have found that roles of the trust and local governing bodies are not always clearly set out in the scheme of delegation or always understood by the parties concerned. This can make it difficult to ascertain whether admission arrangements have been determined as required.

Recommendation. The DfE might wish to consider publishing guidance to MATs to ensure that responsibility for determining admission arrangements is clearly set out and reflected in schemes of delegation to local governing bodies as appropriate.

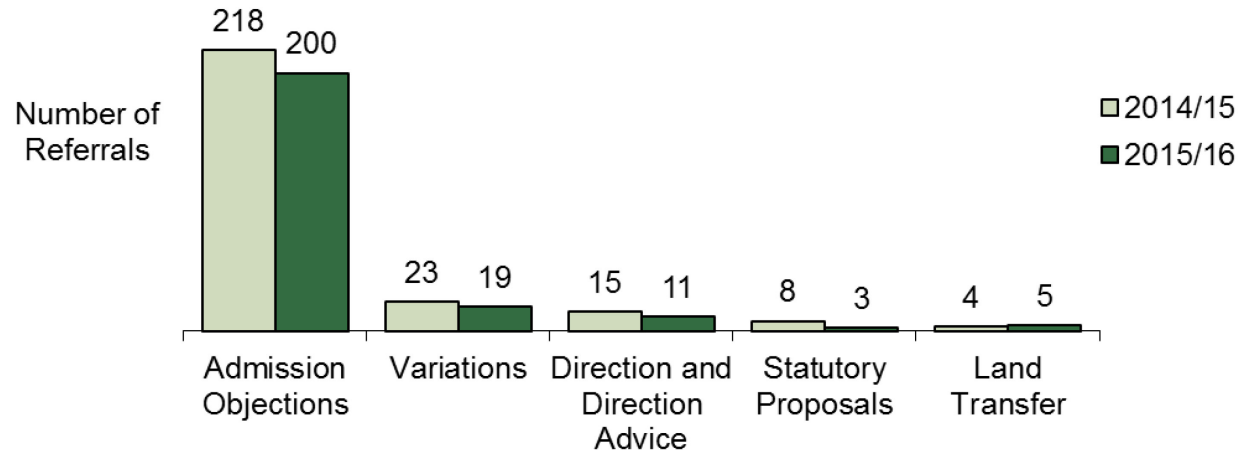
Main finding 6. Evidence from local authorities suggests that the interests of children needing a school place in-year may not always be fully served and that some children may be out of school for too long.

Recommendation. While many local authorities continue to co-ordinate in-year admissions for some schools at least, the DfE may wish to consider whether to bring forward proposals for local authorities to have a duty to co-ordinate all in-year admissions.

Review of the year 2015/16

12. The OSA began the year carrying forward 115 admissions cases and nine other cases. All outstanding admissions cases were completed by the end of November 2015. Few further cases of any type were received in the autumn and winter. The number of new cases – primarily objections to admission arrangements - began to rise from March, reaching a peak in May with 114 objections to admission arrangements received that month, of which 95 were received in the final week before the deadline. Very few objections to admission arrangements were received after the new earlier deadline of 15 May for objections. The high number received just before the deadline, combined with the very few received after this, suggests strongly that those with a potential interest were well informed about the new deadline. The total number of new cases of all types received in the year was 238. This year 77 cases were carried over into the new reporting year of 2016/17.

Figure 1: Referrals by type 2014/15 and 2015/16



13. As in previous years, the OSA secretariat received telephone calls, letters and emails seeking advice and asking for information. Some are from people wishing to refer a matter to the OSA and asking for guidance on how to go about this or seeking clarification on whether the OSA can or cannot consider a particular issue. Others are simply asking for information about – say – school admissions. Still others have questions about matters which are not within the adjudicator's jurisdiction and in such cases staff redirect the enquirer to the DfE or EFA or suggest that the matter is raised with the local authority or school concerned as appropriate.

14. On appointment as Chief Adjudicator, I contacted organisations with an interest in admissions and have had useful meetings with bodies representing different groups of schools, faiths and others. I have spoken at a number of events. It has been particularly useful to hear the perspective of other organisations on the work

of the OSA and on the admissions system. I have had regular meetings with DfE officials from the School Organisation and Admissions Division, so that they are aware of the matters coming before adjudicators and I have also met the Regional Schools Commissioners (RSC) and staff from the EFA.

15. In September 2015, there were 12 adjudicators, including the Chief Adjudicator. Three adjudicators resigned or retired during the year and there are currently nine adjudicators in post. Adjudicators are supported by 5.9 full-time equivalent administrative staff based in the DfE's Darlington office. They are ably led by the Secretary to the OSA who has provided me with much valued support and advice in my first months in post. The whole team is appreciated by the adjudicators for its hard work, knowledge, efficiency and good sense. The administrative staff again managed well the varying workload across the year, including during the summer months when nearly all admissions cases have to be dealt with. The OSA's costs in the financial year 2015-16 fell compared with the previous financial year, reflecting a reducing case load in the last two academic years. Full details are given in Appendix 2.

16. The OSA has continued to receive legal advice and litigation support as necessary from lawyers of the Government Legal Department (GLD). There have been two judicial review claims issued against the adjudicator this year. In January, a determination was partially quashed by the High Court by consent following a claim having been issued by the admission authority concerned. The quashed part of the determination was remitted to a different adjudicator for re-determination. In response to a further determination which concerned the definition of "boarding", the admission authority challenged the determination in the High Court by means of judicial review. The admission authority argued that it was free to call places for which pupils attended for a very extended day but did not stay overnight at school "day boarding places" and that these places could be treated as boarding places for the purposes of the Code and admission to the school. The adjudicator had determined that the places the school had called "day boarding places" were not consistent with the definition of boarding places in the Code. The OSA successfully defended the determination with the result that the determination was upheld as lawful. The High Court has now ruled that for the purposes of school admissions, a boarding place is a place where the child stays overnight and that footnote 34 to the Code provides a definition of "boarding places" which must be followed by admission authorities in determining arrangements.

17. The tendency noted by my predecessor last year of some admission authorities employing lawyers when they receive an objection to their admission arrangements has continued. Admission authorities should be able to construct and explain lawful admission arrangements without recourse to legal advice. I am also concerned that objectors might feel that they need a lawyer in order to make

an objection or that using a lawyer will enhance the chances of their objection being upheld. In reality, an objector need only complete our simple form and if their concern is within our jurisdiction it will be fully considered.

18. We received six requests for information under the Freedom of Information Act, some of which asked for information we do not hold or about matters for which the OSA has no remit. All were responded to within the specified timescales.

19. On completion of a case the parties are invited to provide feedback using the OSA's feedback form. This year we issued 510 forms and received 51 responses. I recognise that only ten percent of those asked to respond did so but I am glad to note that at least 75% of responses rated our service good or excellent in each area we asked about. I was particularly pleased that all those who commented on the work of the OSA secretariat were satisfied with the service they provided. Last year, my predecessor noted that we had received a few critical comments which referred to knowing the timescale within which a decision would be made; and the desirability of providing an early indication if a matter included as part of an objection was not within the adjudicator's jurisdiction. We have amended our processes and documents to address these points. For objections made from the spring of 2016 onwards, we have informed parties early in the process if an aspect of an objection is out of jurisdiction and we have introduced a system to keep parties up to date with the adjudicator's progress so that parties know that cases are under active consideration and can, so far as possible, have an indication of when a case will be completed. I am glad to report that 21 out of 23 responses made after the new system was adopted say that the respondent was satisfied with how we kept them informed of progress.

20. We received three complaints about our handling of cases. All have been closed satisfactorily. In one case I apologised in response to the complainant's concern that a matter had been unnecessarily referred to and that this might have identified the complainant to other parties. We have changed our processes to ensure this does not happen again.

Admissions

Objections to and referrals about admission arrangements

21. Table 1 gives details of the cases considered this year. The new cases related to 81 individual admission authorities, a significant reduction from last year's corresponding figure of 155. This reflected the fact that the arrangements of a small number of schools attracted large numbers of objections[3]. In 2014/2015, the largest number of objections to the arrangements of one school was 13; this year it was 48. I draw attention to the fact that in 48 determinations, the adjudicator did not uphold the objection and did not record any other matters that contravened the Code. In a further 15 cases, the adjudicator upheld or partially upheld the objection, but did not report any other matters of non-compliance. This continues a positive trend noted last year of adjudicators' finding fewer provisions which did not conform with the Code. I note also that of the 18 cases which were out of jurisdiction, in ten cases this was because arrangements had not been determined.

Table 1: Objections to and referrals about admission arrangements by year and outcome

	2015/16	2014/15
Number of cases considered	315[4]	375[5]
Number of new cases	200	218
Cases carried forward from previous year	115	157
Number of different admission authorities in cases received	81	155
Cases finalised	240	260
Number of objections: upheld	73	61
Number of objections: partially upheld	70	98
Number of objections: not upheld	73	51
Cases withdrawn	6	8
Cases out of jurisdiction	18	42
Cases carried forward into following year	75	115

[3] A large number of objections to arrangements shows that many people are concerned about them but does not necessarily have a bearing on whether or not the arrangements comply with the Code.

[4] 200 new referrals and 115 decisions outstanding from 2014/15

[5] 218 new referrals and 157 decisions outstanding from 2013/14

22. Of the 200 new admissions cases concerning 81 different admission authorities, 14 concerned the admission arrangements for 11 community and voluntary controlled schools, 38 for 18 different voluntary aided schools, 51 for three different foundation schools and 97 for 49 different academy schools, including free schools.

23. The pattern from previous years continued, with parents being the single largest group of objectors, accounting for about half of all objections. The remainder came mainly from other schools, members of the public, local authorities and a very small number from a range of sources including the Local Government Ombudsman, a private nursery, appeals panels, a parochial church council, a diocese and a parish priest. Objections were made to a range of matters but there was no one particular matter which attracted a significantly larger proportion of objections than others.

24. On **consultation**, once again some objections drew attention to or were especially concerned about the failure of the admission authority to consult properly as required by paragraphs 1.42 to 1.45 of the Code. As in previous years, there were some common failings in consultation, in particular in relation to failure to consult with parents. A number of objectors said that they had been unaware that arrangements were going to be changed and or that they had responded to a consultation and felt that their views had been ignored. Too many admission authorities consulted other schools and assumed that they would pass the consultation on to parents without actually asking them to do this and did not take any other steps to consult parents of children between the ages of two and eighteen as required by the Code. Other admission authorities relied on the local authority to consult on their behalf without adequately ensuring that the local authority had agreed to do so.

25. Another concern was that consultation had not made clear what aspects of the arrangements were proposed to be changed. However, it is also the case that in considering objections, adjudicators did find good examples of consultation by own admission authority schools. It is to be hoped that these examples may be followed by other admission authorities in the future. **Good consultations** made use of the school's website, social media and local papers to publicise their consultation and where they wished consultees to pass on the consultation, asked them to do so. Good consultations set out a clear rationale for why the admission authority wanted to make the proposed changes as well as setting out what the proposed arrangements were and how they differed from existing arrangements. They provided clear information about how to respond to the consultation and what the deadline for responses was. Some schools also held meetings to explain the proposed arrangements and to listen to parents' and others' views on them.

26. There were also differences in terms of how admission authorities treated responses to consultation. In some cases judging from the notes of meetings (if any) provided to adjudicators, there appeared to have been very little consideration of responses. In others, more encouragingly, comprehensive notes demonstrated careful – sometimes robust – discussion of the best way ahead, informed by assessment of responses and use of all available data. In one case, a school had commissioned an equality impact assessment of different possible sets of arrangements.

27. This year, the deadline for **determining arrangements** was brought forward from 15 April to 28 February as part of the wider changes to the timetable for admissions. Most admission arrangements seen by the OSA had been determined by the due date. However, for ten of the 18 cases which were outside our jurisdiction this was because the arrangements had not been determined when objections were made or indeed, in some cases, by the deadline for objections. The adjudicator has jurisdiction only in relation to determined arrangements so cannot consider objections when arrangements have not been formally determined, even if they have been published and are being used. This meant that we could not consider some cases referred to us. Most such cases concerned individual schools which are their own admission authority or are members of MATs. However, I must note that one local authority was unable to provide any documentary evidence of determining the arrangements of the schools for which it is the admission authority.

28. There are a number of different ways for admission arrangements for academies in MATS to be determined. The MAT may determine the arrangements for all schools in the trust centrally; it may set parameters within which governing bodies of individual schools determine arrangements locally; or it may delegate the determination of arrangements to individual governing bodies entirely. Adjudicators have found that roles of the MAT and local governing bodies are not always clearly set out in the scheme of delegation. This year, a number of schools in MATs were found not to have determined arrangements and there appeared in some cases to be confusion about which body was legally responsible for determining arrangements.

29. Whatever body is the admission authority for a school, arrangements **must** be determined. It must be extremely frustrating for parents who believe they have legitimate concerns about admission arrangements to find that these cannot be investigated because the admission authority has failed to comply with its statutory duty to determine the arrangements.

30. The Code sets clear requirements for the **publication of admission arrangements.** Parents, adjudicators and others should be able easily to find the admission arrangements for any school. Paragraph 1.47 of the Code says: *"Once*

*admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the academic year in which offers for places are made).”* Adjudicators continued this year to consider cases where arrangements were not published or where different and inconsistent versions of arrangements were published or where arrangements were not dated. At best, this can only be confusing for parents and also carries a risk that parents will in the first instance see a version which is not correct, but will believe that it is the correct version. The governing body of a community or voluntary controlled school, for which the local authority is the admission authority, also has responsibilities about what must be shown on the school's website about admissions[6]. Where these schools publish admission arrangements on their websites it is important that, if the arrangements are changed, the local authority works with the schools to ensure that school websites are updated as necessary.

31. As reported in past years, there are still some cases where the admission arrangements are not published in full. The Code at paragraph 5, footnote 5, says: *“Admission arrangements means the overall procedure, practices, criteria and supplementary information used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.”* The published arrangements must therefore be the full arrangements, not just the oversubscription criteria, and must include any supplementary information form if one is used and any other form that, without its being completed, a child cannot be considered for priority for a place at that school. Where the school uses a catchment area, this must also be included whether by means of a list of streets, postcodes or a clear map. There were again this year cases where these requirements were not met.

32. Paragraph 1.47 of the Code applies to local authorities as much as it does to other admission authorities. While almost all local authorities determine arrangements for community and voluntary controlled schools by 28 February, it is not always easy to find them on the authority's website until the composite prospectus is published, which must be by 12 September. This can make it difficult for parents to see the arrangements in time to lodge an objection before 15 May. Clear admission arrangements, including the PAN for each school, should be available in an easily accessible part of the website of the local authority concerned.

33. Compared to previous years, only a small number of objections concerned priority for children who attend the school's **nursery provision**. In these cases, priority was given to all children attending the nursery as distinct from the explicit permission to give priority to children eligible for the early years, pupil or service

[6] As set out in the School Information (England) Regulations 2008

premium and who attend the school's nursery class or a nursery established and run by the school. All the cases were considered on their merits and in the case of those determined by the end of the year, the objections were all upheld.

34. Of the objections carried forward from 2014/15, 36 were about the admission of summer born children **starting school for the first time.** This issue was covered in detail in last year's report. A very small number of further objections on the same matters were received this year. Eighteen of the objections were upheld because the arrangements did not comply with the requirements of either paragraphs 2.16 or 2.17 of the Code, or both, which together set out the duties of schools and the rights of parents in relation to children who have reached the age of four but not compulsory school age[7], and the requirement for admission authorities to include in their arrangements the process for requesting a place out of the normal age group (which of course is not limited to children under compulsory school age).

35. We considered a number of objections about the level of priority given to **siblings**. Past reports have set out the arguments for priority for siblings along with the possible disadvantage for first born or only children if high priority for siblings means that first born or only children cannot secure a place at a local school. This year, none of the objections about sibling priority was upheld, suggesting that in these cases at least, the admission authority had struck an appropriate and fair balance in the light of the circumstances of that school.

36. As in previous years, objections have been made in relation to **catchment areas** for schools, covering the removal, alteration or establishment of a catchment area. Last year's report set out circumstances in which the removal of a catchment area which had previously served local families well might be found to be unfair. This year, relatively few objections which referred to catchment areas were upheld. The reason for this was that, in most cases, when adjudicators examined the evidence, the reason for the catchment area (or its removal) was found to be fair in the circumstances of the school. Objections have been made to the catchment areas used by grammar schools on the basis of an argument that grammar schools (unlike other schools) should not have catchment areas. There is no basis in primary legislation, regulations or the Code for this argument and these objections have not been upheld. So long as the catchment area is fair, clearly defined and reasonable there is no reason why a grammar school should not have a catchment area.

[7] Compulsory school age begins at the beginning of the term after the term in which the child attains the age of five.

37. There were again this year a significant number of objections to the use of **feeder schools** in arrangements. The Code at paragraph 1.15 says, "*Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.*" Paragraph 1.9b prohibits taking into account any previous school attended unless it is a named feeder school. Objections related to the proposed removal of feeder schools; the proposed introduction of feeder schools for the first time, or the addition of further feeder schools to those already included as feeders and to the continued use of existing feeder schools. All the objections related to the use of feeder schools by secondary schools and none to the use of feeder schools by junior schools to give priority to children who had attended linked infant schools. In most of the cases before adjudicators, the feeder schools had been named but there were still some cases where this requirement was not met. In most cases, the school had reasonable grounds for naming the feeders. However, in one case a group of primary schools in a different local authority area had been included without their own local authority (which was their admission authority) being consulted and despite having little relationship with the school concerned. This was not found to be reasonable grounds and the objection was upheld.

38. Admission authorities had a number of reasons for giving priority to children who had attended named feeder schools. These included being an alternative to a catchment area but with the same broad aim of ensuring children had priority for a local school or, in the case of schools with a religious character, to give priority for a secondary school with the same religious character. We have noted this year an increasing trend for secondary schools in MATs to name all primary schools in the same MAT as feeder schools. In some cases involving MATs, the use of feeders was said to be intended to support continuity in provision for children and to reflect links between schools which were members of the same MAT. On investigation, the strength of such links varied, as did the number of children from designated feeders who actually sought places at the secondary schools.

39. In a number of cases, the adjudicator upheld an objection to the inclusion of feeder schools on the grounds that the arrangements were not fair to children who had not attended the feeder schools. The choice of feeder schools was found to be unfair in some cases when these schools were at some distance from the secondary school concerned; giving priority to children who had attended these schools meant that children who lived and attended other primary schools closer to the secondary school would be unable to gain a place there and would face an unreasonably longer or more difficult journey to an alternative school. On the other hand, where there was space at the school for children who lived locally and priority for those who attended more distant feeders came after priority for local children this was unlikely to be found unfair.

40. It is worth noting that the removal of feeders is unlikely – in itself – to be found to be unfair. The Code is clear that it is for the admission authority to determine its arrangements. An admission authority which has had feeders in the past may have good reasons for changing its arrangements. Objections to the removal of feeder schools have sometimes arisen following a change to admission arrangements which in turn were responding to complaints to the school by parents about the existence of the feeders.

41. A number of objections were received to the **faith-based oversubscription criteria** used by schools designated as having a religious character. Some objections were also received to aspects of the arrangements of these schools not related to faith-based matters.

42. Admission authorities for schools with a religious character must comply with the Code on general matters and if they include faith-based oversubscription criteria they must comply with paragraphs 1.36 to 1.38. The Code at paragraph 1.38 says, *"Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code."* Schools with a religious character are allowed by virtue of paragraph 1.9i of the Code to take account of religious activities in giving priority for places, provided that these have been laid out in guidance on admissions by the body or person representing the religion or denomination concerned.

43. We have again seen faith-based admission arrangements which did not meet the Code's requirements. Adjudicators found arrangements which, for example, gave priority for attending a place of worship, but did not make clear how often a person had to attend or for how long this practice had to have lasted. In other cases, there were discrepancies between what was said in the arrangements and what was stated on the supplementary information form, which again meant applicants might not be able to tell whether they meet the criterion or not. Such lack of clarity means that the arrangements fall foul of paragraph 1.37 which says, *"Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied."*

44. This year we had a small number of objections to arrangements which involved the removal of faith-based criteria. In these cases the admission authorities' decisions were supported by the religious authority. There is no requirement for schools with a religious character to have faith-based arrangements and the objections were not upheld.

45. As in past years we have seen many different types of oversubscription criteria. The **complexity** of some schools' admission arrangements continues to be a

matter of concern. Some arrangements have three or four oversubscription criteria and a suitable tie-breaker if two or more children have equal priority for the last available place; others have many more criteria. There can be valid reasons for more complicated arrangements or for arrangements that, at first glance, seem out of the ordinary. These include where a school makes a distinctive – and relatively unusual - type of provision (such as single-sex provision, or if it is the only school with a particular religious character in a large area) and wishes to serve children and families across a wide geographical area. In such cases, however, the arrangements must still meet the Code's requirements, in particular the provision in paragraph 14 that: *"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."*

46. There have been cases where a free school has been established to meet the need for school places in a particular geographic area, but no site could be found for the school within the area of need and it was set up some distance away. Admission authorities have determined arrangements with mechanisms aimed at ensuring the school serve the community for which it was established. These mechanisms have included selecting a point or points (often referred to as nodal points) in the area the school is intended to serve and giving priority based on distance from the point or points to applicants' homes. In other cases, primary schools in the area the school was set up to serve have been named as feeders.

47. We received a number of objections to the arrangements of schools in MATs. This is unsurprising as the number of MATs and the number of schools within them grows. There is a particular challenge for MATs which have schools in different local authorities or across a wide geographic area in terms of setting arrangements which are suitable for the different circumstances of all the schools. In one case, the MAT set arrangements for all its schools, which referred to catchment areas and to measuring distance by walking distance, using the local authority's system. However, one of the schools did not have a catchment area and was located in a local authority which used straight line rather than walking distance. This led to the arrangements being found to be unclear.

48. A number of objections to the admission arrangements of schools within MATs concerned priority for siblings of children at other schools in the MAT. Priority for children who have a sibling at another school (as distinct from the school which the child concerned is seeking to attend) is provided for in paragraph 1.12 of the Code. There can be unfairness to other local children, however, if priority for a particular school is given on the basis of having a sibling at any one of a relatively large number of other schools. In addition, it is hard to see any educational or other benefit from priority for a child to attend a particular primary school on the basis of having an elder sibling at a secondary school which is some distance away, even if both are members of the same MAT.

49. **General Matters** There have been a number of cases this year where the adjudicator has partially upheld an objection on the basis that the school had not met the Code's requirements relating to consultation on and publication of arrangements but found nonetheless that the arrangements as determined conformed with the Code. Objectors may be understandably aggrieved to find that arrangements arrived at following a flawed process can stand. The focus for the adjudicator in determining whether or not arrangements need to be changed relates to whether they meet the requirements of the Code and how they came to be determined may not sufficiently undermine the final arrangements determined. Admission authorities should, however, be clear that proper consultation and publication are important legal requirements and adjudicators will continue to draw attention to failures to comply with these or in appropriate cases find that the arrangements do not meet the Code.

Variation to determined admission arrangements of maintained schools

50. During the year, adjudicators considered a total of 25 requests for a variation to an admission authority's determined admission arrangements. Table 2 gives details of these cases.

Table 2: Variations to admission arrangements

	2015/16	2014/15
Total cases considered	25[8]	29[9]
Decisions issued: approved	20	18
Decisions issued: part approved/modified	0	0
Decisions issued: rejected	1	2
Decisions outstanding	0	6
Out of Jurisdiction	2	2
Withdrawn	2	1

[8] *19 new referrals and 6 decisions outstanding from 2014/15*

[9] *23 new referrals and 6 decisions outstanding from 2013/14*

51. Once determined for the relevant school year, admission arrangements can only be varied, that is changed, in limited, specified circumstances. The Code at paragraphs 3.6 and 3.7 sets out the circumstances in which an admission authority may itself vary its arrangements, for example, to comply with a mandatory requirement of the Code. An admission authority may also propose a variation if it considers there has been a major change in circumstances, but such proposals for a maintained school must be referred to the Adjudicator. Proposed variations to academy arrangements are a matter for the EFA. I note that the OSA secretariat continued to receive queries about the process for variations to the determined arrangements of academies, and they explain that these are handled by, and refer the enquirer to, the EFA.

52. Most requests for a variation were to reduce determined published admission numbers (PANs). At first sight it might seem unusual to see reductions in PANs when demand for places nationally is rising. However, a variation to increase the PAN for a school does not have to be referred to the OSA, so we do not see the full picture in terms of changes to PANs. Some reductions in the PANs for infant schools were in fact consequent on the schools' becoming primary schools and so part of an area-wide strategy to increase overall the number of places available (as local junior schools were also becoming primary schools and beginning to admit children to Reception Year at the same time). Other reductions were requested because PANs had been set in anticipation of building works to expand schools' capacities and funding had been available at the time but was subsequently withdrawn. In other cases, reductions were sought because schools had been significantly undersubscribed for a number of years and capacity had been removed, or the school was due to close and a smaller intake would make this process more manageable.

53. The one case in which a proposed variation was not approved resulted from a school's concern about the effects of applying its determined arrangements. While the application of admission arrangements is not within the adjudicator's jurisdiction, the adjudicator in this case determined that the proposed varied arrangements would not conform with the Code.

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

54. Under Sections 96 and 97 of the School Standards and Framework Act 1998, the admission authority for a maintained school may in certain circumstances appeal to the Schools Adjudicator if notified by a local authority of its intention to direct the school to admit a child and the admission authority believes it has a valid reason not to do so. If a local authority considers that an academy school would be the appropriate school for a child without a school place and the academy school does

not wish to admit the child, the local authority may make a request to the EFA to direct, on behalf of the Secretary of State, the academy school to admit the child. In such cases, the Secretary of State may seek advice from the adjudicator. Table 3 gives details of the cases considered this year.

Table 3: Directions of pupils to a school and advice to the Secretary of State on requests for a direction to an academy

	2015/16	2014/15
Total cases considered	11	15
Decisions issued: upheld	1	1
Decisions issued: not upheld	4	2
Decisions outstanding	1	0
Out of Jurisdiction	2	9
Withdrawn	3	3

55. These cases are given the highest priority by OSA staff and adjudicators as they involve children and young people who may be missing education. The one decision shown as outstanding in the table was completed in September 2016. Adjudicators have this year seen cases where a school had no valid reason not to admit a child in response to a direction. As the figures above show, however, in one case the adjudicator did not recommend that the child should be admitted to the school concerned. The number of cases (maintained school and academies combined) was lower than last year. In relation to maintained schools, we received fewer cases where the local authority had not followed the procedure set out in the Act. Data about the total number of directions are included in the section on reports from local authorities.

Discontinuance and establishment of, and prescribed alterations to, maintained schools

56. The number of statutory proposals referred to the OSA continues to fall and only three such new proposals were received in 2015/16 compared with eight in the previous year. Table 4 gives details. One case had been carried forward from 2014/15, so we dealt with a total of four cases during the year. None was carried

forward. The most common type of case continued to be where the adjudicator is the decision-maker for proposals to discontinue community infant and junior schools and to establish a community primary school, often called amalgamations. Three such proposals were approved.

57. One statutory proposal - to extend the age-range of two schools - was rejected. The local authority had rejected the proposal and the proposer had exercised its right to refer the case to the adjudicator. However, it was clear to the adjudicator that the necessary significant capital funding which would be required to implement the proposal had not been secured. The relevant DfE guidance states that: *"The decision–maker should be satisfied that any land, premises or capital required to implement the proposal will be available".* The adjudicator accordingly rejected the proposal; indeed, there would be little point in approving a proposal which could not in practice be implemented. The adjudicator also noted some other concerns with the proposals which would need to be addressed.

Table 4: Statutory Proposals

	2015/16	2014/15
Total cases considered	4[10]	10[11]
Decisions issued: approved	3	6
Decisions issued part approved/modified	0	0
Decisions issued: rejected	1	0
Decisions outstanding	0	1
Withdrawn	0	1
Out of Jurisdiction	0	2

[10] *3 new referrals and 1 decision outstanding from 2014/15*

[11] *8 new referrals and 2 decisions outstanding from 2013/14*

Land transfers for maintained schools

58. Three of the cases resolved this year concerned whether or not land should transfer to the ownership of a school's governing body or foundation pursuant on its change of category from community school to foundation school. In each case, the adjudicator determined that all or some of the land should remain with the LA. One case was an application by a LA for land which had transferred to a school to be transferred back to the LA; this was rejected so that the land remained with the school. One case involved applications for land to be transferred to a school and from the school back to the LA; in this case, the adjudicator ruled that some land would remain with the school and some transfer back to the LA.

59. The legislation governing the transfer of land sets out specific and detailed tests which must be applied to determine ownership. This is particularly the case for requests for land to be transferred from a school's governing body or trust to the LA. In some cases, adjudicators have been concerned that LAs, schools and the legal advisors to both have not taken the time to check the legal framework before referring cases to the OSA. Some cases have taken a particularly long time to resolve because the adjudicator has found that the necessary legal processes have not been followed. I would expect the number of land transfer cases to remain small. OSA secretariat records show very few requests for information about land transfer. Table 5 gives details of the cases considered.

Table 5: Land Transfer

	2015/16	2014/15
Total cases considered	7[12]	10[13]
Decisions issued	5	5
Decisions outstanding	1	2
Out of Jurisdiction	0	3
Withdrawn	1	0

[12] *5 new referrals and 2 decisions outstanding from 2014/15*

[13] *4 new referrals and 6 decisions outstanding from 2013/14*

Summary of Local Authority Reports 2016

60. Section 88P of the School Standards and Framework Act 1998 requires all local authorities in England to *"... make such reports to the adjudicator about such matters connected with relevant school admissions as may be required by the code for school admissions."* Paragraph 3.23 of the Code stipulates that, *"Local authorities **must** produce an annual report on admissions for all the schools in their area for which they co-ordinate admissions, to be published locally and sent to the Adjudicator by **30 June** following the admissions round."* The Code also sets out, in the same paragraph, what must be included as a minimum; these matters are summarised below.

61. Local authorities are asked to complete a template covering those matters specified by the Code that must be included in their reports. As previously, we have sought additional information to enable me to write on other issues I think it would be useful to include in this annual report to the Secretary of State for Education; I am grateful to local authority staff who have taken the trouble to provide information on all these issues.

62. This year 108 local authorities, compared with 118 last year, met the requirement to submit their report by 30 June and a further ten reports were received the following day. All 152 reports were not received until early September, a much slower response overall than in previous years. Staff of the OSA secretariat had to issue several reminders to a number of local authorities, including some where data was missing from the report initially submitted. Submission of complete reports by the date specified in the Code is greatly appreciated; it is, I know, a time of the year when local authority staff are busy with admission appeals.

63. This summary is based on the evidence of what local authorities say is happening in their area. While asked to write about those matters specified by the Code and additional issues as mentioned above, local authorities are also invited to raise any other concerns they may have. Some of these issues reflect what adjudicators have found in dealing with objections to admission arrangements. Other matters continue to be raised, notably concerning the appeals process, about which the OSA has no first hand evidence as they are outside our remit.

Specific groups

64. The Code requires local authorities to provide specific information about how admission arrangements for schools in their area serve the interests of: looked after children and previously looked after children; children with disabilities; and children with special educational needs, including details of any problems or difficulties that may have arisen during the year.

Looked after children and previously looked after children

65. All local authorities report that, as required by the Code, looked after children and previously looked after children are given the highest priority in the admission arrangements for all schools in their area. Most local authorities present a positive picture regarding the allocation of places to looked after and previously looked after children; several note with gratitude the willingness of many schools to admit such children over their PAN if the school is deemed the most suitable provision for that child by the local authority. A typical comment by one local authority is that it *"will always champion the right of LAC and previous LAC to attend their preferred school, even if that school is full to its published admission number."* Many reports are keen to emphasise that successful placements for looked after and previously looked after children are achieved often through effective collaborative working between admission teams, social workers and others, and through sensitive, face-to-face negotiation with individual schools. From the vast majority of local authority reports, it is clear that the priority admission of looked after and previously looked after children works well and that the requirements of the Code are met in full by most schools to ensure the best possible outcomes for these children.

66. While this is a positive picture overall, and taking account of the fact that all local authorities feel the interests of either looked after or previously looked after children to be at least satisfactorily served, ten local authorities feel that the interests of looked after children are less than fully served, compared with just five last year, and nine express some concern about how well the interests of previously looked after children are met, a similar figure to the ten reported last year. As reported in previous years, a small number of local authorities states that some schools that are their own admission authority still do not make it sufficiently clear in their arrangements that they prioritise the admission of previously looked after children, nor do they accurately or fully explain this category of applicant, while a very small number of schools is said to delay or resist the admission of looked after or previously looked after children. A few local authorities comment that sometimes difficulties arise because of delays in obtaining the necessary evidence that a child was previously looked after, especially if other local authorities are involved, while others report that parents may be reluctant to disclose a child's care history. Several reports comment that faith schools admit looked after and previously looked after children not of the faith only after all faith places have been allocated; however, this is permitted by the Code and is rarely seen to cause a problem in allocating places in the best interests of the children. A very few reports record less positive experiences; typical of these is the comment that *"a small minority of academies have delayed or resisted admission of LACs. This has been less helpful particularly because the procedure to direct academies is unnecessarily lengthy and bureaucratic. In the end, it is this*

disadvantaged group of children and young people that are impacted by the very limited ability of the LA to effect timely change."

Children with disabilities

67. Twenty-seven local authorities report that the interests of children with disabilities are served only partially, although none believes provision to be unsatisfactory. As admission authorities themselves, many local authorities include exceptional social, medical or physical conditions as an oversubscription criterion in their admission arrangements for community and voluntary controlled schools; many give this criterion a high priority, often immediately following that for looked after and previously looked after children. Admission authorities usually require an application against this criterion to be supported by evidence from one or more relevant professional as to why the child should be allocated a place at a particular school. A substantial minority of local authorities makes no special provision of this kind, arguing that most children with a disability will have a statement of special educational needs (SEN) or an Education, Health and Care (EHC) plan and that either of these gives them an automatic place in the most appropriate school.

68. A similar mixed picture is recorded for schools that are their own admission authority, with some local authorities reporting a high number of such schools choosing not to include in their arrangements an oversubscription criterion that refers to special social or medical needs. This, however, is not generally seen to be a problem; one local authority that reports *"a small but increasing number of cases [that] are met with reservations about the school's capability to meet the child's needs"* goes on to say that such cases are usually resolved, and that the issue is *"generally a question of clarification of sources of additional support"* for the school, a situation echoed in a number of other reports. Many local authorities are very positive about adaptations that have been made to school buildings, and training that has been given to teachers and other workers in schools, to enhance opportunity and provision for children with disabilities.

69. A few reports mention yet again occasional difficulties in securing the in-year admission, through the fair access protocol, of children with disabilities. Schools sometimes claim a lack of appropriate facilities, resources, or teaching expertise; such difficulties are usually overcome through local negotiation, but nonetheless the outcome may be to delay access to specific provision the child requires. Disappointingly, several reports also record instances of schools telling parents that they would not be able to meet a child's needs, thus discouraging an application, or even encouraging a parent to decline a place that may have been already offered. Not all parents of children with disabilities understand the need to obtain and submit appropriate evidence to support an application and, as a result, it is reported to be sometimes difficult to admit a child to the most suitable school

after places up to its PAN have been allocated already on national offer day. In response to this situation, at least one local authority now includes in its composite prospectus detailed advice to parents in assembling the paperwork necessary to support an application on behalf of their child on the basis of a social and medical criterion in a school's arrangements.

Children who have special educational needs

70. The vast majority of local authorities, 143, reports that the interests of children who have a statement of SEN or an EHC plan are met in full; none records provision for these children that is regarded as unsatisfactory. Many reports again acknowledge close and productive collaboration between local authorities' admissions and SEN teams and generally good levels of co-operation with schools that are their own admission authorities. Many local authorities detail a range of additional support made available for these children, either in special schools, designated units in mainstream schools or through specific support packages, including transport to and from the school deemed most appropriate.

71. Less positively, local authorities still often report small numbers of schools that are their own admission authority but are not conversant with the requirements of their funding agreement and/or of legislation concerning provision for children with a statement of SEN or an EHC plan that names the school. In such cases, as noted above concerning children with disabilities, parents may be told that the school would not be able to meet the child's needs, thus discouraging an application or encouraging a parent to decline a place previously offered. One report comments, *"There is a concern … that some parents are being actively dissuaded from 'choosing' some schools, which are able to support those learners by making reasonable adjustments as necessary. This practice is being challenged by the LA when it comes to light but it remains a significant concern as it is hard to evidence, and we rely on anecdotes."* Another report comments, *"From time to time we have to remind schools of their legal duty to admit a child once the school is formally named in a statement/EHCP"*. No school (other than an academy, and then only through an appeal to the Secretary of State) has the option to refuse, or to try to discourage, the admission of a child to the school if named in a statement of SEN or an EHC plan. A robust response to such prevarication is summed up in this report: *"Schools who refuse places are challenged about the reasonable steps they can put in place to include a child with a statement. This has resulted in all of the children with statements and EHCPs being offered a place in line with parental preference."*

72. As noted above, children who have a special need, but do not have a statement of SEN or an EHC plan, are often admitted to a school against a social or medical criterion, or by using the local fair access protocol, without great difficulty other than occasional – if nonetheless unwelcome – delay. Compared with the provision

for children with statements, a smaller proportion of local authorities, 111, reports that the interests of these children are fully met, but again none records an entirely unsatisfactory situation. A number of reports note, however, a reluctance on the part of some schools to admit children with behavioural difficulties who have neither a statement of SEN or an EHC plan; the reason given is usually lack of resources, although many local authorities suspect that it is the perceived potential effect on a school's ethos, or on its reported performance in national tests and examinations, that is the real concern.

73. Last year, there was an emerging issue in local authorities that have increasing migrant populations. In such authorities, children who might otherwise have had statements of SEN were arriving with no documentation, or with papers that were not recognised in the United Kingdom, and who therefore had to be placed in mainstream schools while the statutory assessment process began. This situation has continued, and one report comments that *"It would be helpful if there were clearer routes for children with readily identifiable additional needs but no EHCP or Statement."* Mobility among some sections of the population can lead to similar difficulties, with one report detailing the story of an immigrant child whose additional needs were recognised in a statement, but who left the country for a year before returning; the statement could not be reactivated and the child now has to be considered as a standard admission to a mainstream school while the assessment process begins anew. A similar issue regarding primary aged children excluded from schools in other local authorities has been noted several times this year. In most cases, these children have subsequently received an EHC plan or are in the process of statutory assessment following their exclusion; one of the local authorities that raised this concern commented, *"This indicates that schools may not be acting early enough to prevent permanent exclusions where there are obvious special educational needs."*

74. In short, it appears that most issues raised by local authorities regarding special needs or disabilities concern mechanisms to ensure that admissions are implemented in a timely way so as to reduce as much as possible the amount of time that potentially vulnerable and needy children are out of school, and to ensure that any school identified as the best provision for an individual child accepts without complaint or prevarication its responsibility for that child's education.

Co-ordination of admissions

During the normal admissions round

75. Local authorities were asked again to assess the effectiveness of the co-ordination of primary and secondary admissions during the normal admissions round, that is, for entry to schools in September 2016, and to highlight any particular strengths or problems in the process, and any significant differences from the previous year.

The national offer day continues to be universally welcomed. Nearly all local authorities – 146 – report that in their view the co-ordination of admissions to both primary and secondary schools worked as well as or better than in the previous year. Only four local authorities reported primary offer day to have gone less well, and six said the same about the secondary offer day. Reasons included a situation in which a neighbouring authority sent out offer letters for primary places prior to the national date, including some to parents in a number of different local authorities, thereby causing confusion, anxiety and some anger. Another local authority reported difficulties in meeting deadlines when the transfer of information with neighbouring authorities was made difficult by different procedures and incompatible computer systems. Several local authorities noted the pressure on staff in admissions teams where budget cuts have resulted in the loss of posts and the concomitant losses of experience and expertise.

76. One local authority with two free schools located in the same town reported that both made provisional offers to parents who had applied directly to them, as permitted, while at the same time the local authority, through its co-ordinated scheme, made offers of places in other schools to the same parents, some of whom therefore held up to three offers at once. Advice from the EFA was that the local authority could not remove offers until the funding agreements for the free schools had been signed and so it was unable to inform schools of final allocations until very late in the process, with significant implications for other schools in the area, since it was unclear what staffing levels would be needed in different schools, as well as considerable uncertainty for parents and children. This local authority faced the same problem in the allocation of secondary school places, as the two free schools are all-through schools, potentially providing some eight per cent of Year 7 places in the town and so giving rise to complaints from schools and parents alike where allocations could not be confirmed at the expected time. Similar issues around the sign-off of free schools are reported by a number of local authorities; this hampers local authority planning as well as leaving schools and parents in limbo at a time when decisions affecting efficient provision should have been taken and acted upon. Several reports again commented that it would be helpful to local authorities if new free schools and academies were required to be part of the co-ordinated admissions process in their first year of opening, which would reduce both the duplication of offers and the chances of children not receiving any offer, for example where an application had been made directly to a free school as the sole preference.

77. Delays in the exchange of information between neighbouring authorities continue to be a hindrance, particularly in the allocation of secondary school places. The timing of the closure of schools in one authority, brought about to a large extent by other schools increasing their PANs without discussing the consequences and then delayed by the local authority awaiting DfE approval, resulted in some parents who had moved into that authority specifically to access its schools having

offers of places withdrawn at a late stage and eventually being allocated places for their children in a neighbouring authority. A significant number of local authorities mentioned difficulties with schools that are their own admission authority not meeting deadlines when dealing themselves with the ranking of applications, some then calling upon the local authority for help in applying their oversubscription criteria. As many reports again point out, it is the local authority to which applicants instinctively turn for answers when left confused by any part of the process, irrespective of a school's status; parents do not always see a distinction between academies and any other category of school and so assume the local authority is responsible for all decisions regarding allocations and that it has the powers to resolve any difficulties.

78. In contrast to these problems, many local authorities note a continuing improvement in the general efficiency of the application process, with several reporting better and speedier exchanges of information with neighbouring authorities and the commissioning of improved, and compatible, IT systems; many fewer concerns were voiced this year regarding incompatible electronic records within and between local authorities. Unsurprisingly, the proportion of online applications compared with paper-based applications continues to increase, with several local authorities reporting that all applications for primary school places were made online via either smartphone or tablet applications, a system that usefully enabled reminders to be sent if an application had not been correctly completed. The imaginative use of social media by some local authorities to contact parents and carers, enabling queries or problems that may arise to be dealt with more quickly than in the past, has also increased.

79. Among the reported successes of new and more efficient procedures is the practice of modelling allocations to identify where areas of difficulty might be; one local authority reports that, as a result of such an exercise, *"Extra places were … negotiated with schools ahead of the [actual] allocation so a higher % of parents could be offered one of their preferred schools and all remaining pupils were offered an alternative school within a reasonable distance."* A number of local authorities report continued improvement in the proportion of applicants being offered their highest preference school, although this varies depending on the availability of sufficient school places in different areas.

80. Although the date of the Easter holidays did not affect the timetable for primary school applications this year, there is still some concern about parents who are unaware of deadlines in the application process. Many local authorities again called for a national media campaign to back up their own efforts at publicising critical dates. A brief but intense national campaign is seen to be valuable not only in reducing the overall number of late applications but in providing additional support to vulnerable families which, a number of local authorities report, are responsible for a disproportionate number of delayed or incomplete applications.

Some local authorities reiterated last year's comment that the application period itself, some four and a half months from September to mid-January in the case of primary schools, is too long and that shortening this period might enable the overall timescale to be tightened with the resulting benefits to parents of allowing more time to arrange early appeals where needed and for schools to gain time for planning and induction arrangements.

81. Many local authorities would still welcome additional statutory requirements in the process of administering applications. An agreed national deadline for completing the exchange of application data between admission authorities, especially where an authority is part of a grouping such as the Pan London Admissions Board but also has to deal separately with other neighbouring authorities, would expedite allocations in the view of many. A substantial minority of reports again refers to delays caused by awaiting data from other local authorities while others feel that the lack of agreed timescales for late applications, changed preferences and new allocations following the national offer day, make it difficult to help or advise parents who may be applying to a number of schools across several local authority borders.

82. The growing number of schools that are their own admission authority is noted in a number of reports as increasing the complexity of the admissions process, given the volume of data that needs to be exchanged between the schools, the home authority and neighbouring authorities in many parts of the country. Many schools that are their own admission authority, especially (but not only) those recently designated as such, are seen to struggle to comprehend the requirements of co-ordination; late returns and changes to ranked lists of applications cause delays and risk statutory timescales not being met. Local authorities with University Technical Colleges (UTC) or studio schools continue to co-ordinate arrangements for about three in four of them. Where the local authority does not co-ordinate, concerns are often expressed; as one report comments, *"Data on the number of applications for the Studio School for 2015 and 2016 have not been shared … This is despite many requests … It is therefore not known whether applications have been processed fairly and equitably and in line with published admission arrangements."* By contrast, the same report notes that there has been good exchange of information between, and communication with, the UTC which is seen as *"keen to develop partnership working with the local authority and other schools in the interest of children and young people."* On the whole, where local authorities have any involvement with, or knowledge of, the allocation of places in UTCs, they are generally positive in their comments. A small number of local authorities remains concerned that neighbouring authorities accept applications from, and make offers directly to, applicants for studio schools and UTCs which should have been processed by the home authority. What many reports point out, however, is a lack of consistency in how the application process works across different categories of schools that are their own admission authority.

In-year admissions

83. In 2016, the overall number of local authorities involved in administering in-year admissions on behalf of all or some of their schools has risen slightly compared with last year to 134. It seems reasonable to assume, therefore, that this is a service appreciated by the majority of schools, and from the local authority viewpoint it enables accurate tracking of pupil movement, especially those at risk of 'disappearing', and undoubtedly simplifies for parents the process of trying to find an in-year school place.

84. Only 18 local authorities do not co-ordinate in-year admissions for any of their schools, whereas 50 local authorities co-ordinate all in-year admissions. We asked local authorities to submit the numbers of schools in each category for which they co-ordinate in-year admissions where this is a service used by some, but not all, of their schools, which is the situation in just over half of all local authorities. Although data are incomplete, and some local authorities that co-ordinate all in-year admissions also entered the number of schools involved, Table 6 gives an idea of variations between schools for pupils of different ages and in different categories. In each category, the figures are for the number of schools using the local authority service and, in the bottom row, that number as percentage of all schools of that type.

Table 6: Local Authority co-ordination of in-year admissions

	Comm	VC	VA	Foun	Acad	Free	UTC	Studio	Total
Primary	4,469	1068	1,142	248	1,486	46			8,459
Secondary	259	14	110	82	787	31	11	5	1,299
All-through	21	0	1	1	54	13			90
Total	**4,749**	**1,082**	**1,253**	**331**	**2,327**	**90**	**11**	**5**	**9,848**
All schools	**8,165**	**2,075**	**3,348**	**990**	**5,066**	**232**	**35**	**32**	**19,943**
% of all schools using LA	**58%**	**52%**	**38%**	**37%**	**46%**	**39%**	**31%**	**16%**	**49%**

85. Bearing in mind the imperfections in data mentioned above, the table nevertheless shows that a significant proportion of schools use the local authority's in-year

admissions co-ordination service. What is most striking perhaps is that the combined take-up across various types of academy school is only slightly less than in maintained schools. This would appear to endorse the conclusion that support in administering in-year admissions is a service valued by schools of most types, although proportionately less so by the relatively small numbers of Free Schools, UTCs and Studio Schools. About nine in ten of local authorities report that in-year admissions have worked as well or better than last year.

86. At least some schools in 102 local authorities manage their own in-year admissions. They must comply with the requirements in paragraph 2.22 of the Code to keep the local authority properly informed about applications and outcomes and to tell parents of their right to appeal if made aware that there is no place for their child. Forty-seven of these local authorities are not confident that schools keep them updated properly (or even at all) about in-year admission requests and outcomes, and only one in ten of local authorities is very confident that they have full information about in-year admissions. Common concerns are the need to prompt schools regularly to inform their local authority of applications received, places available and allocations made or refused. Many local authorities lack confidence that schools respond to all applications promptly or that they provide, in writing, for those applicants refused a place all the required information concerning reasons for refusal and the applicant's right to appeal. Particular concerns remain around safeguarding issues if vulnerable families are struggling to obtain a place for a child, and if local authorities are not made aware of this quickly enough to limit the length of time that the child is out of school. Poor, or non-existent, communication between schools that are their own admission authority and local authorities can make it difficult for the latter to advise parents effectively of where vacancies may exist. Against this background, it is not surprising that many local authorities state a willingness, often indeed an enthusiasm, to assume once more the responsibility for all in-year admissions. Given the current situation that local authorities may co-ordinate in-year admission arrangements in all, some or none of the schools in their area, parents may be at a loss to know where or how they should apply for an in-year place. This, again, is recognised in many reports as a particular problem for families deemed vulnerable, including some of those for whom English is not their first language.

87. We asked local authorities to report last year on the number of schools parents might approach before obtaining an in-year place. Inevitably, where local authorities were able to provide information, much evidence was anecdotal, and local authorities were not always aware of approaches made by parents to schools if an actual application was not made. This year, some local authorities again suggest that parents may typically approach three or four schools, occasionally as many as five or six, before receiving the offer of a place. However, despite there still being limited hard evidence, a growing number of local authorities express some confidence that better systems of monitoring applications, more use of

information technology, and better reporting from schools has meant that parents have had fewer confusing and time-consuming experiences than previously when seeking in-year admissions for a child. Nonetheless, there remain inconsistencies across local authorities and several continue to have concerns that some schools "cherry pick" children, sometimes even (unlawfully) interviewing a child before confirming or refusing the offer of a place. Schools that are their own admission authority are sometimes known to make background checks on children for whom in-year admission is sought before giving a decision. This is time consuming, and results in a child being out of school longer than should be necessary. Moreover, if a school has available places in the relevant year group, they should be offered to applicants freely and without condition.

88. A frequent concern that has been raised year after year is the unwillingness of some schools to admit children part-way through examination courses, especially if the range of subjects or syllabuses differs from those offered by the school, or just before end of key stage tests in Year 6. In addition to issues around specific courses, there is a strong suspicion among many local authorities that some schools do not wish to admit pupils who, it is felt, may have an adverse effect on the school's published performance tables. A few local authorities continue to report that parents are strongly encouraged by some schools to consider education at home for a child when such factors come into play.

89. A number of reports comment positively on the benefits of schools and local authorities working together to improve systems of in-year admissions. One records, *"we have increased the quality and quantity of information available to parent/carers … and continue to innovate with increasing availability of application methods online … All applicants … receive information at at least 3 key points – before applying, on receipt of their application, and on allocation/refusal. This information includes how applications are considered, and if applicable, the specific reasons for refusal and right of appeal. Coordinated admissions information also signposts parents to appropriate help and resources … "*. Another local authority describes how it *"carried out a 'mystery shopper' activity to provide further assurance on whether schools have applied processes correctly and consistently."* Other examples of good and successful practice include the local authority that provides its schools with statistical information on in-year admissions *"in order that schools can see how in-year admissions have an impact on all schools across the Borough and where there is pressure for places."*

90. The number of in-year places allocated in the period from 1 September 2015 to 15 June 2016 is shown in Table 7 together with the same figures for the previous two years. The total is split 72 per cent – 28 per cent between primary and secondary admissions. Given local authorities' concerns about the lack of, and the reliability of, information they receive from schools, I cannot say with any certainty why the figures show this continuing increase. The rise in numbers this year may simply

be because of improvements noted by a number of local authorities in both their own recording processes and in schools that are their own admission authority passing on the relevant data. That being said, the numbers and year-on-year variations are relatively small in the context of the total number of children in schools; the principal concern for local authorities remains that of identifying and helping to place children for whom in-year admission is sought as quickly as possible, rather than any attempt to explain the numbers involved.

Table 7: The number of children of compulsory school age admitted in-year

Year	2015/16	2014/15	2013/14
Number of children	393,479	380,053	379,813

Fair Access Protocol

91. The Code at paragraph 3.9 requires each local authority to have a Fair Access Protocol (the protocol) agreed with the majority of schools in its area. Fewer than three per cent of primary schools nationally, and just over three per cent of all-through schools have not agreed their local protocol, while for secondary schools the figure is just over eight per cent. Paragraph 3.11 of the Code requires that all admission authorities participate in the locally adopted Fair Access Protocol, irrespective of whether they have agreed it or not. Apart from the Isles of Scilly, where there is only one publicly funded school, and where the local authority has nevertheless expressed an intention to develop a protocol, all local authorities meet the Code's requirement, although a few do not yet have a primary-specific protocol in place, relying instead on standard admission procedures or adapting procedures agreed with secondary schools.

92. Reasons for individual schools not agreeing the protocol include suspicions on the part of some that other schools do not operate in a fair and transparent way in accepting or refusing pupils under the protocol. Others cite potential detriment to the welfare and education of children currently on roll, or a lack of resources to meet the needs of pupils allocated under the protocol. One Free School informed the local authority that the *"admission of additional children over and above PAN will not only cause prejudice to provision of effective and efficient education and use of resources for students already on roll, but will contravene the explicit values, mission and purpose under which [the school] was sanctioned by the Department for Education and the Education Funding Agency."* Although the EFA informed the local authority that this was not the case, places that become available at the school in question are filled from its waiting list, and FAP referrals are mostly refused. In a few local authorities, some schools are reported as wanting absolute guarantees concerning numbers of pupils they might be asked to admit; this would not be permissible against the Code, or desirable when geographical and transport factors are taken into account. Other schools that have recently converted to academy status are reported to state occasionally that the academy trust was not involved in consultation on the protocol and therefore cannot accept it. One academy refused to participate in the local protocol because of a clause in its funding agreement that prohibits the permanent exclusion of any child. A number of local authorities report that they have not been made aware of the specific reasons for individual schools not agreeing the local protocol, although many acknowledge that all schools nevertheless accept the need to work with it.

93. Local authorities were again asked to assess how well the protocol has worked in placing, without undue delay, children in need of a school place. They were asked also to provide the numbers of children placed using the protocol. Fewer than one in ten local authorities report difficulties in implementing the protocol during the

past year, and an even smaller proportion reports less effective operation of the protocol than previously; despite this, just over six in ten report some difficulties in allocating places using the protocol. Four in ten of local authorities have had to use the protocol more frequently than in the previous year, with the incidence of usage remaining stable in about half. Table 8 shows the total number of children admitted to a school using the protocol during the period covered by this report, the number refused a place and the number admitted via a direction. Only 20 local authorities report having directed at least one school to admit a child.

Table 8: Use of Fair Access Protocols (2015 data in parenthesis)

	Primary	Secondary	All-through	Total
Admitted via the protocol	11,166 (8,958)	9,301 (8,563)	345 (234)	**20,812 (17,755)**
Refused admission	877 (403)	636 (720)	34 (4)	**1,547 (1,127)**
Admitted via a direction	17 (13)	21 (25)	2 (0)	**40 (38)**

94. The number of primary age children admitted using the protocol shows a considerable increase from the previous year's figures, with an even greater proportionate increase in the number of primary age children refused admission. Although none of the reports offers a straightforward reason for these sudden rises, comments scattered throughout many local authorities' responses suggest that primary schools are becoming more concerned about admitting pupils who may exhibit challenging behaviour or have other special needs, and that it may have become necessary to resort to the protocol more often than before to ensure that such children are allocated a school place as swiftly as possible. While the corresponding data for secondary school admissions shows a small but significant increase, the number of pupils refused admission to secondary schools shows a marked decrease. Although a few local authorities express concern that data are incomplete, these remain nevertheless relatively small numbers of pupils in the context of the total number of admissions for the school year.

95. Although most local authorities state that they have agreed the protocol with the majority of schools, a minority report difficulties with some schools either not agreeing the protocol, or agreeing it but implementing it only after considerable efforts at persuasion, if then. Yet again, reluctance to admit is often reported as based on concerns about the impact the child may have on the school's performance data. Schools in several areas are reported as advising the local authority that teaching groups are full even though year group numbers are known

to be below the PAN at the time of that cohort's entry to the school. Several local authorities employ a formal or informal escalation procedure to resolve issues before reaching the point of direction, often involving direct negotiation between a senior officer and the school, and most report that this has worked successfully, although a few have had to refer to the EFA to secure directions to academy schools, which inevitably delays the child's re-entry to education. The increase in the numbers of primary children refused admission underlines the problems described by some local authorities in persuading schools not merely to agree the protocol, but also to accept their responsibility to assist in making it work. Difficulties are encountered most frequently with schools that are their own admission authority, which account for about half of those that have not agreed the local protocol. I must state unequivocally that, despite what some schools seem to believe, all are bound by the protocol that applies in their authority, whether they have formally agreed it or not.

96. Overall, the data suggest that protocols work effectively, given the relatively low proportion of pupils refused admission, and of directed admissions, compared with those routinely allocated places. This is borne out by comments in a great many reports. Several say that schools willingly admit children with challenging educational needs, according to agreed rotas, while others detail points systems or ranking indices to ensure fairness and parity when allocating children to schools. A number of local authorities make use of pupil referral units, or of support staff who liaise with homes, while information is collated and before it is decided whether a mainstream placement would be suitable, thus ensuring that children are not overlooked or neglected while awaiting permanent placement under the protocol. Reports repeatedly refer to the challenges faced by local authorities and schools in admitting pupils to years 10 and 11, but several again describe successful collaboration with local colleges and alternative providers in assembling bespoke packages that enable young people to re-enter and participate successfully in education. Significant numbers of schools are recorded as working collaboratively so that, for example, pupils attend on a dual registration basis as best meets their needs, either permanently or on a trial basis until it is decided which placement is the more suitable. Several local authorities comment once again on the strains placed on the system by the arrival of large numbers of migrant children, many of whom speak little or no English, and for whom complex support packages have to be negotiated with a range of providers. While the admission of children under the protocol poses a challenge to some schools, overall there are many positive, even celebratory, accounts of innovative thinking and successful joint working that results in successful placements for children, many of whom experience their first real educational success as a result.

Admission appeals

97. The DfE has since 2015 used the latest published Statistical First Release to collect data about admission appeals. For this report, I have again asked local authorities to report to me on the extent to which schools that are their own admission authority continue to use local authority services for appeals, and to comment on any aspect of the process that either works well, or causes difficulties.

98. The response this year was that 138 local authorities continue to provide appeals related services in their area to at least some schools that are their own admission authority. In the primary sector, it is voluntary aided and academy schools that make up the majority of the schools taking these services, whereas in the secondary sector, academies predominate. The support offered by local authorities ranged from giving advice on legal matters, through assisting in the preparation and presentation of appeals through to managing the entire process.

99. Many authorities commented again on the challenge, especially for schools that are their own admission authority, in assembling impartial and skilled appeals panels; some mention providing support, for example templates covering the recommended content of appeal case files, or training on preparation for and presenting at appeal hearings, but take-up is frequently reported as disappointingly low. When the local authority itself is administering the process, one points out that *"Panel members are sometimes asked to commit to 5-8 days hearing appeals for a school which is a lot to ask an unpaid volunteer to commit to. It can be extremely difficult to convene sufficient numbers of panels to hear appeals within the time limits set within the [Code]."* Many local authorities commented on pressures of time, often exacerbated by recent reductions in staffing, with at least one large shire county having to deal with upwards of 2,000 appeals last year.

100. A major issue for appeals concerns admissions to infant classes. As one local authority reports, the level of such appeals *"remains high despite the very limited scope for an appellant getting a refusal overturned. In most cases, parents are trying to demonstrate the 'unreasonableness' of the decision to refuse admission, but really they have no case."* That view is echoed in many reports, some of which reiterate the need – as they see it – for clearer centralised direction to parents about appeals which are likely to be successful or not, and on what grounds. Once again, many reports call for a "paper panel" or "triage" system that would limit full hearings to those cases where there was seen to be a reasonable chance of success.

101. Again, many reports mention difficulties caused by the misunderstanding of regulations and processes by schools that manage their own appeals procedures. Sometimes there is little or no communication between these schools and the local authority, which often receives no notification of the outcomes of appeals. This

lack of communication may extend to non-publication on schools' websites of information about the appeals process and timescales, a requirement of the School Admissions Appeals Code. As with the situation concerning in-year admissions, therefore, parents may be unsure about whether they should contact a school directly, or the local authority, if they wish to lodge an appeal or if they simply need advice about procedures. One report disturbingly records that *"Parents sometimes report that an own admission authority school has indicated that there is no point in submitting an appeal because there are no places available and appeals are costly for the school. In these cases, the County Council contacts the relevant school for clarification. Through routine briefings, schools are reminded that parents have a right to go to appeal for any place that is refused and they should not be discouraged from exercising that right."* Other reports allude to similar concerns.

102. Despite the anxiety in many reports about the high level of demand on the resources of the local authority and the time of staff, many are intent on ensuring that appeals procedures are improved. One reports that *"all appeals are clerked by a qualified solicitor … every panel member receives training once a year … presenting officers not only visit schools, but have the Headteacher's sign-off before the final statement is submitted. Academies are also invited, should they wish, to observe appeals (stage 1 only) and this often reinforces their willingness to buy the service."* Another local authority reports that its presenting officer visits each community school in order to gain a broad understanding of the facilities and needs of each school, which in turn enables more precise information to be given to an appeals panel regarding the efficient use of resources, and the impact an additional child may have on a class or a school. Many local authorities provide interpreter or translation services to support the appeals process where needed. Notwithstanding the difficulties mentioned above, my overwhelming impression is that local authorities manage the appeals process diligently, with genuine concern for applicants who challenge decisions, and that they strive to achieve the best educational outcomes for the parents and children concerned.

Other issues

103. In response to concerns that have emerged over recent years, some of which were reported last year, we asked local authorities to comment on four additional matters. I invited comments on: objections to admission arrangements made by the local authority; fraudulent applications for admissions; issues relating to the admission of summer born children, deferred entry to school and part-time attendance; and if any consideration had been given within the local authority, including schools that are their own admission authority, to allow for priority admission to children eligible for any of the pupil, service or early years premiums.

104. **Objections to admission arrangements by the local authority.** Paragraph 3.2 of the Code says, *"Local authorities **must** refer an objection to the Schools*

Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful". Local authorities were asked to submit data on three issues: (a) the level of confidence that all arrangements for schools that are their own admission authority are fully compliant with the Code; (b) the number of sets of admission arrangements queried directly with schools that are their own admissions authority because they were considered not to comply with the Code; and (c) the number of such schools that did not submit a full copy of their determined arrangements, including supplementary information and/or religious enquiry forms where appropriate, by 15 March 2016, as required by paragraph 1.47 of the Code.

105. The level of confidence that all arrangements for schools that are their own admission authority are fully compliant with the Code is shown in Table 9. This shows an improvement on last year with slightly more authorities being very confident about compliance and fewer not confident

Table 9: Local authorities' level of confidence that all arrangements for schools that are their own admission authority are fully compliant with the Code

	Very confident	Confident	Not confident
2015/16	65	79	8
2014/15	59	75	18

106. Table 10 shows that local authorities queried admission arrangements in about seven per cent of schools that are their own admission authority. This is a slightly smaller proportion than in the previous year. A possible explanation for this may lie in the comment frequently found in reports that increasing numbers of schools that are their own admission authority, together with staffing cuts in local authorities, means that there is less detailed scrutiny of admission arrangements than might be desirable and so fewer causes for objection are identified and pursued.

Table 10: Numbers of Local Authority queries raised with own admission authority school (2015 data in parenthesis)

Category of school	Number of schools for pupils up to age 11	Number of schools for pupils aged over 11	Number of all-through schools
Voluntary Aided	264 (275)	20 (27)	1 (1)
Foundation	24 (27)	14 (30)	0 (0)
Academy	168 (157)	174 (179)	4 (6)
Free School	7 (10)	6 (17)	3 (3)
UTC	 (n/a)	0 (2)	 (n/a)
Studio School	 (n/a)	1 (3)	 (n/a)
Total	**463** **(469)**	**215** **(258)**	**8** **(10)**
Number of own admission authority schools nationally at 30 June 2016	**6,939**	**2611**	**153**

107. In total, 686 sets of admission arrangements were queried across 63 local authorities, showing hardly any change from last year; however, 414 of these queries were raised by just seven local authorities. This suggests therefore that either non-compliance is endemic in a very small number of areas or, more likely, that some local authorities – maybe those with larger numbers of schools and higher levels of staffing – devote more time than others to scrutinising arrangements. I am of the opinion that many sets of arrangements that may be non-compliant are simply not scrutinised sufficiently closely by local authorities.

108. Although not invited to comment on data recorded in this section of their reports, a number of local authorities took the opportunity to state elsewhere that the task facing them in checking the compliance of the arrangements of large and increasing numbers of own admission schools is daunting. Nevertheless, I remain concerned that, when objections are made to the OSA, adjudicators continue to find matters in the admission arrangements of schools that are their own admission authority that ought to have been found and remedied during local authorities' in-

house checks. Examples would include: references to feeder schools which did not name the schools involved; incorrect or incomplete wording in respect of looked after and previously looked after children; and supplementary forms, including religious reference forms where required by faith schools, that are not published as part of the arrangements, or that request unnecessary or prohibited information. If, in the view of the local authority, a set of arrangements does not comply with the Code, then it must lodge a formal objection with the OSA.

109. The requirement in paragraph 1.47 of the Code to send the local authority a full copy of admission arrangements, including any supplementary forms, by 15 March was not met by 1,848 schools that are their own admission authority, around 20 per cent of the total number of such schools. Primary schools accounted for more than 70 per cent of this total.

Table 11: Numbers of own admission authority schools not sending full copies of arrangements to their Local Authority by the required date (2015 data in parenthesis)

Category of school	Number of schools for pupils up to age 11	Number of schools for pupils aged over 11	Number of all-through schools
Voluntary Aided	553 (680)	52 (40)	2 (1)
Foundation	184 (250)	75 (88)	3 (1)
Academy	599 (467)	302 (335)	14 (8)
Free School	21 (19)	13 (14)	3 (4)
UTC	 (n/a)	10 (6)	10 (n/a)
Studio School	 (n/a)	5 (3)	0 (n/a)
Total	**1,357** **(1,416)**	**457** **(486)**	**32** **(14)**

110. **Fraudulent applications for admissions.** We asked again if local authorities had any concern about fraudulent applications. Almost a half of authorities reported concerns, and just over a half had withdrawn offers as a result of their investigations. As in previous years, the overriding concern among local

authorities was the prospect that fraudulent applications might be made, rather than the scale of any actual problem, which remains very small in terms of reported numbers of cases. In total, 267 offers of places were withdrawn, most of them (205) for primary schools; this is a slightly reduced overall figure compared with 2015, when 284 offers were withdrawn, but still an increase from 2014, when the number of withdrawn offers was 186. In 2014, 66 local authorities withdrew some offers of places; in 2015, the number was 79 and this year it was 81. Over a half of all withdrawn offers this year were in London boroughs or the south east.

111. Local authorities again describe a comprehensive range of robust measures used to check for fraudulent applications, most drawing on cross-referencing applicants' details with other local databases such as electoral rolls, council tax details and so on. Many employ spot checks of various kinds, including unannounced home visits, and some report using social media to identify or check on applicants suspected of supplying fraudulent information, as well as encouraging 'whistle blowing', with at least one local authority having a formal referral form for use by any member of the public, that may be completed anonymously if the person so wishes. Many local authorities state openly that in whatever they do, they take full account of guidelines issued by the Surveillance Commissioner. Many large authorities, particularly shire counties, report that the number of applications they have to process precludes a full check on every one and that at best they use random spot checks across a sample of applications, responding often to accusations of malpractice from members of the public; some provide briefings for schools that are their own admission authority to help them check an application's authenticity for themselves. An increasing number of local authorities reports that they include strong statements about fraudulent applications on common application forms and/or in composite prospectuses.

112. A significant minority of reports raises concerns about establishing what might reasonably be accepted as the principal or permanent residence of an applicant, especially where rented accommodation is involved, where a family owns more than one property or an applicant lives at various times with different members of the extended family, or is of no fixed abode. Most of these local authorities state that they would welcome a definitive central ruling on the issue, as advice to applicants can vary depending on the local authority to which they apply, sometimes causing problems of inconsistency in processing cross-border applications.

113. Overall, local authorities remain fully alert to the possibility of a fraudulent application and are generally confident in their ability to identify and deal with it. There is a strong sense from most reports that the increased number of fraudulent applications reported in the past two years may well be the result of greater vigilance and improved systems rather than an actual increase in the incidence of attempted fraud.

114. **Summer-born children, deferred entry and part-time attendance.** In December 2014 the DfE issued updated non-statutory guidance on the admission of summer-born children. The revised Code, also issued in December 2014, refers in paragraph 2.16 to deferred entry and/or part time education for children in the year they reach compulsory school age; paragraphs 2.17, 2.17A and 2.17B refer to the admission of children outside their normal age group. We again asked local authorities to report on any relevant data they hold, that is, in relation to requests for children to be admitted to a class outside their normal age group, including the number of such requests agreed and the reasons given for delaying a child's entry to reception, and for any other comments on matters relating to the admission of summer-born children such as schools' alerting parents to the possibility of part-time education, and the frequency of requests for this. Data provide only a partial picture, as not all local authorities hold information on all these matters.

115. One hundred and thirty-one local authorities hold data concerning some aspects of the admission of summer-born children, of these, 108 hold some data about these issues for schools that are their own admission authority. The data is set out in Table 12. Year-on-year comparisons are impossible, given that data are incomplete, but I remain confident that, despite some increases over the past three years and widespread media campaigns in some parts of the country, these data still represent a very small proportion of the total number of primary admissions.

Table 12: Requests for admission to reception classes for children who have reached the normal age for Year 1

	Community and VC	Other schools	Total
Requests	1073	458	1531
Agreed	901	341	1242

116. Reasons reported for parents' seeking to delay the admission to reception of a child for a full school year include: concerns about the progress and development of children born prematurely; children who may not have a statement of SEN or an EHC plan but nevertheless show developmental delays; and various social, emotional and medical factors, including for example children diagnosed as being on the autistic spectrum. Reasons considered less convincing include instances where children born late in the year had been refused a place at the parents' preferred school, but where no specific developmental justification for deferred entry was cited; some local authorities indicated that is some such cases the motivation lies in the hope of obtaining the preferred place in the following round of admissions, rather than in any specific need of the child. Wanting to remain with younger friends from pre-school, or parents facing difficult childcare arrangements are other claimed justifications for deferred entry that, understandably, are not

entertained by schools. Several authorities again report that significant numbers of requests for deferral are withdrawn if parents meet with the school and relevant professionals and thereby gain a better understanding of schools' scope to adapt and differentiate provision for individual children. Many local authorities take very seriously what they believe to be an important role in advising parents to consider possible long-term consequences of delaying initial admission to school, given that such deferral may not continue later in the child's schooling; indeed, several reports cite instances of secondary schools that have a stated policy of not accepting any application from out-of-year cohort children.

117. The number of actual applications for deferred entry remains low but is reported as occupying much local authority time, not least during a year when it has been made known that a change to the Code, that may make deferred entry an entitlement, is under consideration by the government. One report commented, *"The delay in the Code changes for summer-born children has made giving advice and co-ordinating the process very difficult and time-consuming. We have tried to apply/encourage schools to apply the Government's intention, however some schools are reluctant when the law itself has not changed and therefore the advice we give to parents needs to take this into account, which can cause confusion and delay in a response."* Several local authorities have similarly decided to incorporate the proposed change into their admission arrangements ahead of legislation, and are advising parents accordingly, whereas others are awaiting the outcome of consultation. It is likely, therefore, that there will be a somewhat confused – and, for parents, confusing – situation in the next admissions round.

118. We asked for the first time this year if local authorities had any information about the extent to which admission arrangements highlight the permission given in paragraph 2.16 of the Code for parents to request part-time education up to the point at which a child reaches compulsory school age, and the incidence of parents requesting such provision. One local authority reports that all its primary schools have a part-time policy that is shared with parents and several commented that part-time education is routinely discussed as an alternative choice for parents seeking deferred entry for their child. One authority referred to a school that encourages groups of parents wanting part-time education to agree to synchronise desired attendance times in order to assist the school's internal organisation. An overwhelming majority of local authorities had no information to share, or no comment to make, on this issue. Adjudicators seldom see explicit reference to this permission in admission arrangements, and I suspect that many parents are not aware of it. If taken up on a large scale, it would undoubtedly pose significant organisational problems for many schools; nonetheless, it is an entitlement and where local authorities comment, as do a number, that *"few parents take up the offer of a part-time place"* I wonder how transparently such offers are always made. One local authority notes that *"anecdotal evidence appears to indicate an increase in the proportion of families wanting to take up the offer of part-time education"* and

goes on to suggest that collecting data in order to *"monitor trends and impact"* would be useful in helping schools to manage what is seen as *"a challenge both in terms of school organisation and disruption to the child's learning."*

119. **The pupil, service and early years premiums.** The 2014 Code enabled all schools to give priority for admission from the 2016 round onwards to children eligible for the pupil, service or early years premium. If admission authorities wish to introduce the priority they need to consult as required by the Code. This year, following the second admissions round for which this permission might have been implemented, we again asked local authorities to report on whether this had been considered, consulted on and implemented in any community or voluntary controlled schools, and whether any schools that are their own admission authority had consulted the local authority on this matter. Local authorities were also invited to comment on issues arising from implementing this permission.

120. Forty-three local authorities have considered introducing the pupil or service premium in the arrangements of some or all of the schools for which they are the admission authorities. Sixteen local authorities have carried out consultation and six have already introduced priority for children who are entitled to the pupil or service premium for some or all of their schools. A number of local authorities that reported last year to have deferred consideration of this issue have reported further deferral this year. The level of interest has been greater in schools that are their own admission authority: the local authority reports say that 97 schools that are their own admission authority have in fact introduced the change, 44 of which are secondary academies and a further 17, primary academies.

121. Many local authorities remain unconvinced, or at least unsure, as to how a pupil or service premium criterion might be used to improve social mobility or help schools reduce educational inequalities. The position of many local authorities is reflected in the response of one local authority that it *"felt that children from all backgrounds were well catered for through the existing admission policies … All community and voluntary controlled schools prioritise pupils by a defined catchment area, which is made up of a variety of dwellings from different socio-economic backgrounds."* Local authorities express concerns that giving priority to pupil or service premium children might mean that other children could not attend their local school (and that this in turn might lead to a need for them to have free transport to other schools); that siblings may end up in different schools from one another; that some families entitled to free school meals do not register for this and that the introduction of priority based on pupil or service premium could make school place planning more difficult. The local authorities which have introduced priority include large shire counties and smaller urban authorities. Between them they serve a wide range of communities. I am sure they will have considered the challenges outlined by other local authorities and found ways to deal with them. In the light of concerns nationally about social mobility, I think that consideration should be given to how

the experiences of those local authorities which have introduced priority for children entitled to one or more premium might be shared with other local authorities so that the full potential of the scope to use pupil premium in admissions can be realised.

122. Many local authorities where there are high numbers of service personnel feel that their needs are already well served by the provision in the Code to allow a place to be allocated in advance and that there is no need to complicate admission arrangements further. Over-complication is seen by many local authorities to be unhelpful to applicants, but may affect the school as well: one records the experience of an academy primary school that included a pupil premium criterion in its arrangements for the 2016 admissions round but found that implementation was not straightforward, requiring a further administrative process, at a cost to the school, to determine and check eligibility. The academy trust has indicated that it intends consulting on removing this priority for admissions in 2018.

123. Twenty-four local authorities have considered implementing the use of the early years pupil premium as an admission priority, although only five consultations have yet taken place, with no school implementing the change as yet. In the case of schools that are their own admission authority, 13 have consulted their local authority and 15 have implemented a change, the majority of which, eight, are voluntary aided schools.

124. Local authorities' comments on the early years pupil premium echo many made with reference to the pupil and service premiums. A distinct point raised in a number of reports, however, is that prioritising applicants eligible for the early years pupil premium who also attend the nursery provision of the school in question may work against other families including, but not only, those who may be equally disadvantaged in social or financial terms, but choose not to send their child to nursery provision for a variety of reasons, including cultural preferences. Several comment that many nurseries attached to primary schools take children from a much broader catchment than the school and that, given many local authorities' commitment to preserve the local provision of primary places, there would be reservations in adopting this priority and possibly thereby displacing and distorting the demography of the most popular primary schools. With the absence of legislation on admissions to nursery classes, local children not in receipt of the early years premium could find themselves being sent further away to school, which parents would be unlikely to see as either fair or reasonable. One local authority discounted the possibility of introducing this criterion and defended the current situation robustly, stating that *"Providing an equal footing to all applicants on admission to Reception class is a long standing principle of admissions law, and for good reason, as it affords the greatest equality of opportunity to all applicants."* Other reports point out that issues of sustainability are likely to arise in private and voluntary pre-school settings if more parents were encouraged, by the introduction of this criterion, to send their child to a school-based nursery rather than a private

or voluntary sector provider, with possible longer-term consequences in providing sufficient places to respond to fluctuating birth rates and family movement. Several local authorities point out that numbers of places in maintained nursery provision tend to be less fluid and more difficult to increase, often due to building and staffing constraints, than in the private sector.

Other issues - from local authorities

125. The Code makes provision for local authorities to comment on any issues they wish to raise that are not covered elsewhere in their report. Once again, relatively few additional matters were raised, but a number of reports used the opportunity instead to reinforce responses to previous sections (summarised above) where they felt a strong message should be conveyed to the Secretary of State.

126. **Own admission authorities' arrangements.** Above all, many local authorities (as in previous years) detailed wide-ranging concerns about their capacity to check compliance with admissions legislation and the Code in the arrangements of increasing numbers of schools that are their own admission authority. In the view of a large number of local authorities, many such schools do not appear to know about, or to understand, their responsibilities regarding aspects of admission arrangements, such as the requirement to consult on changes, the need for full and timely publication of arrangements and the probity of any appeals process. As one report states, *"We have had experience of schools being almost oblivious to their new responsibilities in terms of determining and writing admission policy documents and managing the independent appeals process. While emphasis seems to be placed on many other matters related to becoming an academy school, the importance of fulfilling statutory admission responsibilities does not seem to be given the necessary importance."* A particular issue in this context, noted in a number of reports, is the failure by some schools to inform applicants of the reason for refusing to admit a child, compounded often by not then advising applicants of their right to appeal the decision.

127. A worrying trend reported by a number of local authorities is the lack of transparency in the information made public by some schools regarding available places in specific year groups, and overall numbers on roll; discrepancies become apparent when annual census returns are made. One local authority stated that *"Our major concern continues to be schools refusing applications whilst under Published Admission Number …"* Finally, in a comment that would be endorsed by adjudicators who have had to determine objections to labyrinthine arrangements, one local authority complained of own admission authorities' arrangements that *"the main concern … is their complexity, particularly the extensive use of … criteria to determine how places are allocated which in our view makes the process less transparent for parents and difficult to understand for some."*

128. **Planning for school places.** That last point links to another general concern among many local authorities regarding the ability to meet their statutory obligation in securing the provision of sufficient school places. A general point raised is the lack of EFA funding, but specific difficulties reported include again the effects of changes to PANs, notably on neighbouring schools in particular, and on the co-ordination of admissions generally, when schools that are their own admission authority decide to admit above PAN, or to increase their PAN as permitted by the Code, without previous discussion and with little apparent regard to consequent 'knock on' effects. One local authority summed up the issue as, *"Where a school admits additional children and there are already sufficient places in the area for all applicants to be offered a place it has a negative effect on other schools … which are then left with vacancies. This also affects the LA's ability… to plan school places in advance."* Issues around the opening of Free Schools add to the problems faced by some local authorities; as one commented, *"Having Free Schools outside of co-ordination in their opening year has again proved challenging with the local authority forced to open bulge classes."*

129. Two other significant matters concerning the planning for, and provision of, places were raised, one general and one specific but which I feel may become a broader concern in the future. The general issue is one which, as noted earlier in this report, has been the focus of a number of objections to admission arrangements, and concerns the growth of multi-academy trusts (MATs) where secondary schools are determining admission arrangements that afford priority to the primary schools in their MAT, irrespective of local links, and where these primary schools may lie beyond what would be regarded as the school's normal catchment area, whether formalised as such or not. In these circumstances, pupils who might in the past have been able to access the secondary school by virtue of living close to it are now given a lower priority than some pupils who may live further away but attend a primary school within the MAT. This has an impact on local authority planning, and potentially leads both to a fall in successful preference allocations, possible increases in transport costs and a deficit of places in some areas.

130. The specific issue causing planning difficulties for school places has been the purchase by a London borough of cheap accommodation in a nearby shire county, to which some 200 families are being relocated. While primary places are available to the children of these families, the nearest secondary places are 10 miles away; as the local authority comments, *"In many instances these will be families in vulnerable situations and were this children in care, this would not be allowed without proper planning to ensure they can access suitable education."* The report in question goes on to comment that *"LAs can manage a gradual change to school intake patterns but cannot plan for mass migration coordinated to happen all at once with no funding from the placing LA to support their access to education."* While this may appear at first sight to be a broader political issue than simply a matter of school admissions, the local authority's point regarding planning

and provision, and for the safeguarding of potentially vulnerable children, make it legitimate to include here, not least as the 'receiving' local authority worries that this could become a model for other local authorities to cut costs by *"buy[ing] up cheap housing developments, pricing out and displacing local communities and doing it on mass* [sic] *so there is no time for the infrastructure to be put in place."*

131. **Pupils with challenging behaviour.** A further issue linked to some schools' perceived lack of transparency regarding available places concerns the admission of children who it is thought may present problems of challenging behaviour. Part of the difficulty is seen to arise from paragraph 3.12 of the Code, which refers to 'governing bodies' rather than 'admission authorities' not wishing to admit a child with challenging behaviour. Several local authorities comment that schools are increasingly concerned about, and may attempt to delay or refuse, the admission of pupils whose challenging behaviour (which may include poor attendance) will have an impact on the school's results, especially if the pupil is in a critical year group, such as year 11. A number of reports comment that some schools (identified mainly as academies) *"make decisions that are in breach of the Code in refusing admission on the grounds of previous behaviour or an assessment that a child may have special educational needs."* While local authorities acknowledge they have the power of direction or, in the case of academies, the right to ask the Secretary of State to make a direction, they are aware that they need also to maintain positive and effective relationships with schools.

132. **Co-ordination of in-year admissions.** Yet again, as discussed above, many reports reiterate concerns about local authorities' inability to gain an accurate overview of in-year admissions, both the processes and the outcomes. As reported in previous years, a significant number of local authorities would welcome a return of the responsibility for co-ordinating in-year admissions, not least to address concerns such as the difficulties of placing children in key stage 4, and providing for immigrant children with little or no English. One report states unequivocally that *"LAs are best placed to track, monitor and plan provision for children who move into their area or wish to change schools and should be given full responsibility for in year admissions"*, while another points to the role this could have in identifying children missing education, saying that *"statutory regulation around the coordination and cooperation from schools with regards to in-year admissions will help to strengthen the process and place a requirement on schools to provide relevant information within a strict timeframe. This will promote safeguarding and minimise the risk of children missing education."* Other reports also record concerns about *"the hidden cohort"* of young people who, due to the lack of legislation around elective home education, are not currently brought to the attention of the local authority. One local authority states that *"the changes to in-year admission have made it more difficult for parents to access school places, more difficult for local authorities to effectively identify and support vulnerable and*

fair access children and those at risk of missing education and also more difficult for local authorities to identify and challenge poor or unlawful practice."

133. **Application issues.** Although fewer concerns were expressed than in previous years, a number of local authorities continue to plead for an energetic media campaign to ensure, as far as is possible, that parents are aware of application deadlines for children about to enter Reception Year. There continue to be significant numbers of late applications in many areas, with a consequent overloading of the appeals process at a late stage. A related concern is with the lack of timescales set out in the Code for each stage of the appeals process, *"including how long to respond to an application and how long an admission authority has to produce appeals paperwork for the parent."* Although issues around the admission of summer-born children, as reported above, do not seem significant in terms of numbers involved, several local authorities nonetheless felt that current DfE guidance could be improved both to avoid confusion or misunderstanding by parents and to make decision-making less resource intensive for local authorities and support services. A significant number of local authorities continue to request a centralised ruling on what is defined as an applicant's address, citing the time and effort required to carry out checks and the number of agencies with which it may be necessary to cross-check if a fraudulent application is suspected.

134. **The Code.** Once again, it is clear that a number of the concerns raised in this summary are seen by local authorities as an inevitable consequence of what is often described as the 'slim' Code. A potential difficulty in reconciling references in the Code to children with challenging behaviour, citing statements in paragraphs 1.6, 1.9g and 3.12 that may not sit comfortably together, has already been mentioned. Another example is that when, in relation to responsibilities towards looked after and previously looked after children, the Code refers to 'the local authority', it is not clear whether this means the child's home authority based on a residential address, or the local authority which actually looks after the child, or the local authority in which the preferred school is located. While in some situations, these might all be the same authority, in others it could be two or three different bodies. This can inevitably cause difficulties in trying to negotiate admissions with schools, and confusion or worse for parents.

Appendix 1 - Background to the OSA

135. The OSA was formed in 1999 by virtue of section 25 of the School Standards and Framework Act 1998 which gives the Secretary of State the power to appoint *"persons to act as adjudicators".* It has a remit across the whole of England.

136. In relation to all state-funded 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 appeals from admission authorities against the intention of the local authority to direct the admission of a particular pupil; resolve disputes relating to school organisation proposals; and resolve disputes on the transfer and disposal of non-playing field land and assets. The Chief Adjudicator can be asked by the Secretary of State for Education to provide advice and undertake other relevant tasks, including advice on requests from local authorities that an academy should be directed by the Secretary of State to admit a particular child.

137. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. Their role is to look afresh at all cases referred to them and to 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. There is no legal requirement for adjudicators to hold meetings in the course of their investigations but they may do so if they consider it would be helpful, and could expedite the resolution of a case.

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

139. Determinations are legally binding. Once published, they can be challenged only through the Courts. They are checked before publication by the Chief Adjudicator and, where appropriate, by lawyers from GLD. Determinations do not set precedents and each case must be decided in the light of its specific features and context alongside the relevant legal provisions.

Appendix 2 - OSA Expenditure 2015-16 and 2014-15 [1]

Category of Expenditure	2015-16 £000	2014-15 £000
Adjudicators' fees	405	756
Adjudicators' expenses	19	28
Adjudicator training/meetings	62	95
Office Staff salaries	150	180
Office Staff expenses	5	5
Legal fees	40	45
Judicial Review Costs[14]	100	
Publicity [2]	0	0
Professional services	0	3
Administration/consumables	1	1
Total	**782**	**1,113**

Notes:

1. Information relates to financial years 2014-15 and 2015-16. The report covers the academic year 2015/16.

2. 'Publicity' relates only to the notification of public meetings held by the adjudicator.

[14] This represents an amount ordered by the High Court to be paid to a claimant towards its costs following the outcome of a Judicial Review hearing in April 2015.

Appendix 3 – Table Index

Table 1: Objections to and referrals about admission arrangements by year and outcome

Table 2: Variations to admission arrangements

Table 3: Directions of pupils to a school and advice to the Secretary of State on requests for a direction to an academy

Table 4: Statutory Proposals

Table 5: Land Transfer

Table 6: Local Authority co-ordination of in-year admission

Table 7: The number of children of compulsory school age admitted each year

Table 8: Use of Fair Access Protocols (2015 data in parenthesis)

Table 9: Local authorities' level of confidence that all arrangements for schools that are their own admission authority are fully compliant with the Code

Table 10: Numbers of Local Authority queries raised with own admission authority school (2015 data in parenthesis)

Table 11: Numbers of own admission authority schools not sending full copies of arrangements to their Local Authority by the required date (2015 date in parenthesis)

Table 12: Requests for admission to reception classes for children who have reached the normal age for Year 1

Office of
the Schools
Adjudicator

About this publication:

Enquiries osa.team@osa.gsi.gov.uk

Download www.gov.uk/government/publications