



Office of
the Schools
Adjudicator

Office of the Schools Adjudicator Annual Report

September 2016 to August 2017

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Introduction

This report covers the period 1 September 2016 to 31 August 2017 and is my second report as Chief Adjudicator.

While adjudicators are independent of the Government, this report is written against the background of the Department for Education's objective to ensure that "every child and young person can access high-quality provision." A school system with fair admissions at main points of entry and where children – especially vulnerable children – who need places outside the normal admissions round are found a place as quickly as possible, will help to secure that objective. Admission arrangements which are clear will help ensure that all parents have the chance to express fully informed preferences for their children's schooling. In compiling this report, I have accordingly focused on what makes admission arrangements fair and unfair, and clear and unclear.

I hope the findings in this report will be of use to the Secretary of State, his Ministers and their officials, local authorities, faith bodies, academy trusts and school governing boards. The report is shorter than in previous years. I recognise the many calls on the time of those for whom this report is relevant and I hope that a relatively short report will be welcomed.

Shan Scott

Chief Adjudicator

Office of the Schools Adjudicator

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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

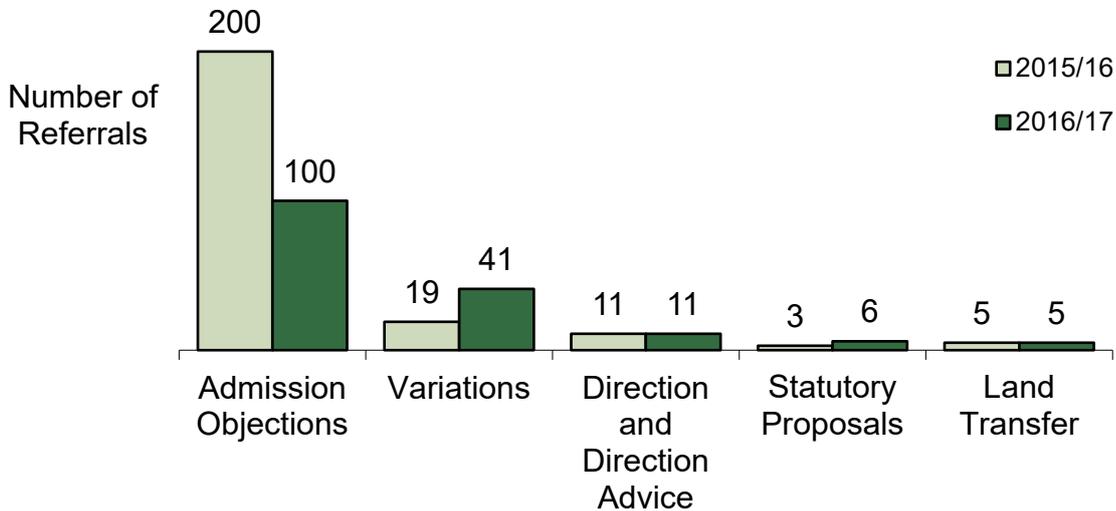
1. The Office of the Schools Adjudicator (OSA) dealt with cases from across its remit in the 2016/17 academic year. This report reflects matters identified during adjudicators' consideration of cases and matters raised by local authorities in the reports they make to me under The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and the School Admissions Code (the Code). 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.
2. **Admissions:** As in previous years, reports from local authorities and adjudicator case work suggest that the main admissions rounds for entry to schools works well and serves well the interests of looked after and previously looked after children, those with disabilities and special needs or who are vulnerable for other reasons. This is a significant benefit of the current system which works much better than it did prior to the introduction of co-ordinated admission arrangements and the mandatory priority given to looked after and previously looked after children. I remain less confident that the needs of children who need a place outside the normal admissions rounds are so well met and I am concerned that some of these children, particularly the more vulnerable, 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 suitable places for children who are referred to them. Few cases result in a school being directed by the local authority or the Education and Skills Funding Agency (ESFA), on behalf of the Secretary of State, to admit a child.
3. The 2014 School Admissions Code allowed all admission authorities to give priority in their admission arrangements to children on the basis of eligibility for one or more of the **pupil, early years or service premiums** (the premiums). Local authority reports show that the admission authorities for over 300 schools now make use of one or more of the premiums in their oversubscription criteria. While this is a small proportion of the overall number of schools, I have noted that the schools which give such priority are a diverse group covering all age ranges, rural and urban schools, large and small schools and different categories of schools.
4. **Objections to admission arrangements** have continued to form the largest part of our work. During the year 37 objections were upheld; 56 partially upheld; and 33 not upheld. Objections covered a large number of matters including the selection of feeder schools, testing arrangements in grammar schools, faith based arrangements and catchment areas. A key element of many objections was that the determined arrangements failed to meet the core requirements to be clear and fair or that oversubscription criteria were not reasonable or clear. In such cases, adjudicators have investigated carefully to ascertain whether a group of children is

being, or could be, disadvantaged by the arrangements. This is because for arrangements to be found unfair, there must be an identifiable group to whom they are unfair. It is right that there is scope for different sorts of arrangements and no single approach would or could work in all circumstances; but, whatever approach is chosen, the arrangements have to be set out clearly. Admission arrangements which are clearly written so that they can be understood by parents and which take account of the impact they will have on who will and will not have priority for a place are least likely to be the subject of successful objections.

5. Over recent years, adjudicators have dealt with many objections which argued that the faith-based admission arrangements of schools with a religious character were not clear. During the course of the year covered by this report, the Catholic Education Service produced a set of model documents which set out possible requirements for gaining priority on the basis of religious observance. The wording used is clear and simple. If these models are adopted by large numbers of schools with a Catholic religious character, this should be of great help to parents interested in their children attending a Catholic school.
6. The OSA received more requests for **variations** to the determined admission arrangements of maintained schools than last year, a total of 41. The main reasons for seeking variations related, as last year, to admission to Reception in schools with falling rolls.
7. The number of new referrals against a local authority's notice of intention to **direct a maintained school to admit a pupil** combined with the number of cases where the ESFA **requested advice on the admission of a child to an academy** was 11, which was the same as last year. In addition, one case was carried forward from 2015/16, so a total of 12 cases were completed in the year.
8. Six **statutory proposals** were referred to the adjudicator. This was more than in previous years. The number of **land transfer** cases remained very small with five new cases received. Land cases included, for the first time, applications for the OSA to resolve land matters relating to the proposed removal by a school with a foundation (a trust school) of its foundation.

Review of the year 2016/17

Figure 1: Referrals by type 2015/16 and 2016/17



9. The overall number of cases referred to the OSA in 2016/17 was 163 compared with 238 in 2015/16. We began the year carrying forward 75 admissions cases and two other cases. All outstanding admissions cases were completed by 5 December 2016. The number of new cases – primarily objections to admission arrangements - began to rise from March, reaching a peak in May with 52 objections to admission arrangements received that month, of which 41 were received in the final week before the deadline. This year 45 cases were carried over into the new reporting year of 2017/18. The number carried forward has dropped in the last two years; this has been assisted by the new and earlier deadline for objections to admission arrangements and means that more admission authorities knew the outcome of cases in good time to make any necessary changes for admissions in 2018.

Admissions

Objections to and referrals about admission arrangements

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

	2016/17	2015/16
Cases carried forward from previous year	75	115
Number of new cases	100	200
Total number of cases considered	175	315
Cases finalised	141	240
Number of objections: upheld	37	73
Number of objections: partially upheld	56	70
Number of objections: not upheld	33	73
Cases withdrawn	3	6
Cases out of jurisdiction	12	18
Cases carried forward into following year	34	75

10. The 100 new cases received this year related to 91 individual admission authorities. This is an increase in the number of admission authorities referred to the OSA from last year when the 200 new cases covered 81 admission authorities (with a large number being lodged to the arrangements of a small number of schools). Of the new cases, 15 concerned the admission arrangements for 14 community and voluntary controlled schools, 11 for 11 voluntary aided schools, six for four foundation schools and 68 for 62 academy schools, including free schools. I draw attention to the fact that non-compliant arrangements were found for every category of schools, including schools where the admission authority is a local authority, a board of governors or a multi-academy trust. As in previous years, parents were the single largest group of objectors, accounting for about half of all objections. Other objections came mainly from other schools, members of the public and local authorities.

11. In 41 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. This is welcome. In most cases, the objector's interest and reason for objecting was clear and understandable. I remain concerned, however, that some objections are made to advance a desire to change the requirements relating to admissions rather than because determined arrangements did not comply with the Code.
12. In most of the cases before adjudicators, arrangements had been determined as required and by the deadline of 28 February. However, as in past years, a number of admission authorities had failed to determine their arrangements. Some schools on becoming responsible for their admissions for the first time take forward these responsibilities in an exemplary fashion. Others do not. Adjudicators noted several instances where, on becoming an academy, schools continued to use all, or aspects of, the admission arrangements set for them in previous years. In some such cases the arrangements published on the school's website referred parents to catchment area maps, definitions and other key information published on the local authority's website. Adjudicators often found that these links did not work, or were out of date, resulting in the school's arrangements being found to be unclear or incomplete. In other cases, arrangements lacked key information, such as that concerning out of normal age group admissions and, for children below compulsory school age, the rights to deferred entry and part-time attendance, required by the Code.
13. As in past years there were concerns that arrangements had been changed without the **consultation** required by paragraphs 1.42 to 1.45 of the Code. Adjudicators found common failings in consultations, in particular in relation to failure to consult with parents. This matter has arisen in several consecutive years. I therefore asked local authorities for their views on effective consultation, hoping that I might be able to combine these with evidence from cases considered by adjudicators in order to provide suggestions about what a good consultation exercise might look like. In particular, I was interested to find out more about good consultation with parents as, in our experience, it is parents who most frequently complain that they have not known about proposed changes. Based on all I have seen, it seems to me that practice ranges from extremely good to very poor indeed. Good consultation uses a number of different ways to reach those with an interest, takes account of the likely interests and concerns of the target audience and is followed by careful consideration of responses. In paragraphs 36-40 I summarise the very useful information I received from local authorities about consultation.
14. Objections were made to a range of matters. Past reports of the Chief Adjudicator have covered in detail objections to the use of feeder schools, catchment areas, faith based arrangements and relative levels of priority given or not given to siblings. This year there were again objections about all of these matters. For each

of these, there are clear requirements in the Code that, for example, feeder schools must be named (paragraph 1.15) and that catchment areas must be clearly defined (paragraph 1.14). In some cases, adjudicators did find that admission authorities had failed to comply with mandatory requirements. The arrangements in question had to be amended. However, I wish to focus on the broader underlying concerns, raised by objectors in around 90 of the cases determined this year, about fairness and reasonableness. The Code requires at paragraph 14 that arrangements must be fair (as well as clear and objective) and at paragraph 1.8 that oversubscription criteria must be reasonable (as well as clear, objective and procedurally fair). In embarking on a consideration of reasonableness and fairness, I recognise and emphasise that what is fair and reasonable will depend on the context of the school.

15. It is common for priority to be given to some or all **siblings**. Arrangements were likely to be found to be reasonable and fair when they struck a balance between giving a high priority to siblings, especially in primary schools (where it can be very difficult for parents to have to take children to different schools), and the needs of first born or only children to be able to attend a local school. This can be challenging for admission authorities. An approach which works well in many situations is to give priority to in catchment siblings, then other catchment children, then out of catchment siblings and finally other children. However, it will always be crucial for each admission authority to consider what approach is best in the circumstances of the school and area concerned.
16. As in previous years, objections have been made to **catchment areas** for schools, covering the removal, alteration or establishment of a catchment area. In areas where there is a system of contiguous catchment areas to ensure that all children have a high level of priority for at least one school, the creation of new housing or changes to the demographic profile of an area can lead over time to arrangements ceasing to be fit for purpose. Some schools may lose the capacity to cater for all their catchment children while other catchment areas may contain far fewer children than was previously the case. We also received objections this year that some areas were not included in any catchment area as the area in question had not historically included any housing; in one case the land now occupied by houses had previously been an army range. The change in the use of the area had not been reflected in a change to catchment areas, leaving some children with little priority for a place at any school.
17. Not all catchment areas are expected to be able to cater for all children who live within them. Some, for example, may be used to ensure that all children in an area have the same or some opportunity to attend a school offering a distinctive type of provision such as single sex or faith-based provision, recognising that the opportunity for any particular child may not be high. In these cases, it would not be realistic to expect the school to have as many places available as there are likely to be children of the relevant age or gender living in the catchment area. The

fairness and, indeed, the reasonableness of catchment areas is affected by circumstances and it is important that catchment areas are kept under review.

18. Objections relating to **feeder schools** covered the removal of feeder schools, the addition of further feeder schools to those already included as feeders and the continued use of existing feeder schools. A number of cases involved multi-academy trust secondary schools giving priority to children who had attended primary schools in the same trust. 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. Adjudicators upheld some objections to the inclusion of feeder schools on the grounds that the arrangements were not fair to children who had not attended the feeder schools. In such cases, the deciding factor as to fairness was not simply that there were other primary schools nearer to the secondary school than the feeder schools or that the published admission number (PAN) of the school was greater than the sum of the PAN of the feeder schools. Adjudicators considered whether the feeder schools had been selected on reasonable grounds as required by paragraph 1.15 of the Code and whether the **effect** of the selection was reasonable and fair. In assessing this latter aspect, adjudicators considered whether there was a group of children who would be unfairly disadvantaged as a result of the arrangements. If the giving of priority by a secondary school to children from certain feeder primaries means that other children will face a significantly longer or more difficult journey to different schools as a result, then the arrangements are likely to be found to be unfair. If such children will, on the other hand, have reasonable access to another school, then the arrangements are more likely to be found to be fair and comply with the Code.
19. More objections were made to the arrangements of **grammar schools** and partially selective schools than in previous years. Some of these concerned the schools' testing arrangements and whether they were "*a true test of ...ability*" as required by paragraph 1.31 of the Code; fair as required by paragraph 14 of the Code and whether or not they might "*disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs*" contrary to paragraph 1.8 of the Code. The adjudicator found mainly that the tests and test arrangements were compliant with the Code. In relation to a series of objections to the arrangements of the grammar schools in one authority area, the admission authorities for those schools had already embarked on changing their testing arrangements.
20. Past reports have commented on what seemed be unnecessarily **complex arrangements** while also recognising that there are valid reasons for some schools to have a relatively large number of oversubscription criteria or more complicated arrangements. When relatively complex arrangements are used, there is an increased need for admission authorities to satisfy themselves that the

arrangements are clear and expressed in language that parents – who are the main and most important readers of admission arrangements – will understand. Clarity is a requirement of paragraph 14 of the Code which goes on to say that: *“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

21. This year, we have again seen **faith-based admission arrangements** which did not meet the Code’s requirements, in particular because the arrangements were not clear. 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 criteria 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.”* In this context, I want to draw attention to the work done by the Catholic Education Service. In 2015, with the aim of improving the consistency across the country, many Catholic dioceses encouraged their schools to move from a system based on diocesan priests’ references to a national system of a Certificate of Catholic Practice (CCP). The intention was to ensure that the measures used to determine Catholic practice are the same across diocesan boundaries.
22. Following its introduction, there were a number of objections about the use of the CCP and adjudicators found at that time that arrangements based on the CCP were not sufficiently clear or objective. Following the determinations, the Catholic Education Service worked closely with the OSA and the Department for Education (the DfE) to address the concerns raised. The Catholic Education Service drew up and has promulgated a definition, approved by the Catholic Bishops’ Conference of England and Wales, of what is required in terms of religious practice for a CCP to be issued. This definition is written in clear and straightforward language. Objections can always be made to arrangements and must and will always be considered on their merits, looking at the arrangements as a whole. However, I think it is right that I say in this report that Catholic schools using the CCP with the accompanying definition and explanation are striving to meet the Code’s requirements.
23. There were only two objections this year about the arrangements relating to the admission of **summer born children** (children born between 1 April and 31 August) starting school for the first time. This represents a significant decrease from the numbers in the previous two years. A further objection this year related to the admission of children outside their normal age group to secondary school where children had been educated at primary school with a younger age cohort. The Code provides that parents may seek a place for their child outside of the normal age group. This is not limited to applications for those starting school for

the first time but includes children moving from infant or first to junior or middle schools and from primary to secondary schools. Adjudicators reviewing arrangements in the course of considering objections about other matters found a number of cases where the information requirement about out of normal year admissions was not included or did not conform with the Code. Similarly, some admission arrangements did not make clear that parents could defer the entry to school of their children until they reached compulsory school age and that children could also attend part time until they reached compulsory school age.

24. Permission for all admission authorities to give priority for admission to children entitled to one or more of the premiums was introduced in the 2014 Code and applied to admission arrangements from September 2016. Prior to that, academies whose funding agreement contained the necessary derogation from the Code could give such priority if they wished. The admission authorities for over 300 schools have now introduced elements of priority for children entitled to one or more of the premiums. This is a small proportion of the total number of schools in England but the schools do represent a very wide range of types and size of school and includes schools for which the local authority is the admission authority and own admission authority schools. One local authority has decided to use the service premium saying "*As a naval city the service criterion has assisted the local authority in meeting the expectations of the Service Covenant.*" A voluntary aided primary school in another part of the country now includes entitlement to pupil premium as its highest criterion after looked after and previously looked after children on the basis that "*In accordance with the School's Trust Deed dated 26th June 1896 priority is to be given to the poor of the parish. This is defined as children living in the parish of St John the Baptist who are entitled to pupil premium funding ...*" More detail about the use of the premiums is given later in this report.
25. This year we received a number of objections about the **published admission number** (PAN) set for schools. These included objections by local authorities to the setting of reduced PANs by own admission authority schools and by community or voluntary controlled schools for which the PAN set by the local authority was either higher or lower than the school wished. In determining these objections adjudicators had regard to the Code's provision that "*There is a strong presumption in favour of an increase to the PAN*". Objections to reduced PANs were likely to be upheld where the local authority has been able to show that there will be a need for the places which would have been removed.
26. As noted above, the majority of objections to admission arrangements are submitted in a short period of time just before the deadline of 15 May. I thought it might be helpful if I were to say a little about how objections are prioritised within the OSA. We give particular priority to objections which may affect secondary school admissions. This is because the closing date for applications to secondary schools (31 October for the following September) is much earlier than the corresponding deadline for primary schools (15 January for that September). If any

changes are to be required to admission arrangements, we consider it is helpful if these can be made before the deadline for parents to apply for places. Some cases take longer to resolve than others because they raise more complex matters or because a meeting with the parties is necessary. We recognise that dealing with an objection is an additional burden for an admission authority. We strive to keep this to a minimum and we welcome feedback on how we might improve our processes further. We particularly appreciate the speedy responses many admission authorities and other interested parties provide to help us complete determinations in a timely manner.

Variations to determined admission arrangements of maintained schools

27. During 2016/17, adjudicators considered a total of 41 requests for a variation to an admission authority's determined admission arrangements.

Table 2: Variations to admission arrangements

	2016/17	2015/16
Total cases considered	41	25
Decisions issued: approved	28	20
Decisions issued: rejected	3	1
Decisions carried forward to following year	6	0
Out of Jurisdiction	3	2
Withdrawn	1	2

28. Once determined for the relevant school year, admission arrangements can only be varied, that is changed, in limited, specified circumstances. Some variations do not require the adjudicator's approval, 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 ESFA.

29. As was the case last year, most requests for a variation were to reduce determined PANs. In many cases this was because schools had been significantly undersubscribed for a number of years. These variations were approved where the data suggested that places would not be needed. Variations were not

approved where the evidence was that there was demand for the number of places indicated by the determined PAN including one case where the governing body opposed the proposed reduction.

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

30. 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 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 would be the appropriate school for a child without a school place and the academy does not wish to admit the child, the local authority may make a request to the ESFA to direct, on behalf of the Secretary of State, the academy to admit the child. In such cases, the ESFA may (again on behalf of the Secretary of State) seek advice from the adjudicator.

Table 3: Directions to maintained schools to admit children and advice to the Secretary of State on requests for an academy to be directed to admit children

	2016/17	2015/16
Total cases considered	12	11
Maintained schools – determination that:		
School required to admit child	5	2
School not required to admit child	1	0
Another school required to admit child	1	0
Advice to Secretary of State to:		
Require academy school to admit child	1	2
Not require academy school to admit child	2	1
Decisions/advice outstanding	0	1
Out of Jurisdiction	1	2
Withdrawn	1	3

31. These cases are given the highest priority by OSA staff and adjudicators as they involve children and young people who may be missing education. In relation to maintained schools, we received only one case where the local authority had not followed the procedure set out in the Act. This is a positive development given that the corresponding figure two years ago (that is for 2014/15) was nine cases out of

jurisdiction out of a total of 15. As can be seen from the table, the adjudicator concluded in just over half of the cases considered that the school should admit the child. Data about the total number of directions made by local authorities is included in the section on reports from local authorities.

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

32. The number of statutory proposals referred to the OSA increased with six new referrals received in 2016/17 compared with three in the previous year. None was carried forward. Two concerned the expansion of a school where the local authority had not made the decision within the prescribed two months. Two were proposals to establish new maintained schools in cases where the adjudicator is the decision maker. These four cases were all approved. The final two were appeals against decisions made by local authorities. One of these appeals was upheld with the result that a school which wished to expand its age range was able to do so. The second appeal was not upheld with the result that a school, whose numbers had become very low indeed, closed.

Land matters for maintained schools

33. There continue to be few such cases. Only one of the six cases referred was completed during the course of the year and the adjudicator determined that a caretaker's house should not transfer to the foundation for a school pursuant on its change of category from community school to foundation school. Among the cases carried forward (and resolved since the end of this reporting period) were two cases involving schools which wished to remove their foundation and had not been able to agree land matters with the foundation concerned.

Summary of Local Authority Reports 2017

34. This part of my report summarises the reports which local authorities in England responsible for education are required to submit to the OSA. Each local authority must also publish its full report locally.
35. I am grateful to local authorities for their efforts in returning their reports to me and for the feedback provided on the process for 2016. Some local authorities have provided simply the figures requested and few, if any, comments whereas others have provided far more comment. Not all local authorities answered all the questions raised and not every question was relevant to every local authority. I have quoted from individual local authority reports where it seemed to me the comments reflected widely held views or made particularly important points. Where the circumstances of different local authorities give rise to differing views and perceptions I have tried to reflect the range of such views and perceptions. As might be expected, local authorities commented particularly where they faced challenges and problems. Reports also included examples of good practice and I have included these in the hope that they may be useful to others.

Admission arrangements in the normal admissions rounds

Consultation on admission arrangements

36. Admission authorities are required to consult on their arrangements when a change is proposed to the admission arrangements or at least once every seven years. Many local authorities provided me with information and examples of good practice on consultation. Based on all I have seen, it seems to me that good consultation – whether by local authorities or schools – uses a number of different ways to reach those who may have an interest. It will include a prominent and simple message on the front page of the relevant website, backed up with more detailed information and use of print and social media. Examples of ways in which schools and local authorities have communicated about proposed changes include:
 - a. asking (other) schools and early years settings (including childminders) to pass on information about the consultation to parents;
 - b. articles in the local press including free papers sent to every household in the area, magazines/newsletters published by voluntary groups in an area, family information directories and child focused magazines;
 - c. use of local radio and social media including Twitter and Facebook and online parent forums (one local authority described a parental networking group with over 3,000 members);
 - d. seeking feedback and responses online as well as in paper form;
 - e. posters in schools, stay and play session locations, supermarkets, doctors' surgeries, children's centres, health centres, places of worship and the

- f. local authority's own buildings;
 - f. consultation meetings including drop in sessions targeting areas or groups which past experience showed were less likely to respond;
 - g. use of personal contacts - talking to parents at the school gate or at parents evenings;
 - h. asking local voluntary groups, parish councils and faith bodies to use their networks to pass on material and information; and
 - i. direct emails to parents who have given permission and provided email addresses via their applications for admission in previous years; this had a high response rate.
37. I was disappointed, given these excellent examples of what can be - and is being – done to learn that nearly 30 local authorities thought that putting material on their website (which might be a committee paper and thus not at all designed with parents in mind) is sufficient consultation. It was equally worrying to see that some of these local authorities said that the consultations undertaken by own admission authority schools in their area were good because the local authority undertook these on their behalf. For a consultation to be effective, those affected must have a reasonable chance of knowing that the consultation is happening. Simply putting information on a local authority website (even if accompanied with a link to the local authority's Twitter feed) and doing nothing else to bring it to the attention of parents is not enough.
38. Many local authorities give advice, support and reminders to own admission authority schools to help with effective consultation. One large shire authority described a template it had developed which described the process, who to contact and the correct timeframes for consultation. Alongside the template, the local authority offers a meeting with the headteacher and chair of governors.
39. I asked how confident local authorities were that own admission authority schools had consulted properly. Not all admission authorities consult in any given year, so local authorities could only tell me about those who had consulted. The majority of local authorities believed that most admission authorities in their area consulted properly but also that a few did not. Twelve local authorities said that there had been occasions when the local authority itself had not been consulted by an own admission authority school on a proposed change to its arrangements. If an admission authority does not manage that basic step, then the rest of its consultation is unlikely to be effective.
40. One local authority echoed similar comments when it said, *“The local authority contacts own admission schools annually to remind heads and governing bodies of the consultation and determination timeline but we are aware that some own admitting authority schools, particularly new academies/free schools and UTCs seem to be unaware of consultation requirements or the need to adhere to the School Admissions Code.”* Another local authority said, *“In worst case scenarios,*

head teachers make changes on their websites without having any regard for the Code, seemingly unaware that this is not possible.” Another local authority is trying to keep a register of consultations as it has found that often the admission authorities themselves do not know when they last consulted as staff or governors have moved on and records seem not to be available.

Determination and publication of arrangements

41. Every admission authority is required to determine its arrangements annually. One hundred and thirty-eight local authorities reported that they determined their arrangements by the required date (28 February) and 137 had published their arrangements by the required date (15 March). Two local authorities reported that they have no community or voluntary controlled schools so have no arrangements to determine. Thus 12 local authorities did not meet their statutory duty in terms of determining their arrangements. Two of the 13 local authorities that had not published their arrangements by the required date did not publish them until June 2017 which is after the deadline for objections, making it difficult for anyone to lodge an objection.
42. I also asked local authorities to say how many arrangements determined by own admission authorities in their area they had queried. Eighty-one local authorities told me they had queried at least one set of arrangements and this is an increase from last year’s figure of 63. In total 633 sets of arrangements were queried out of a total of 7,416 own admission authority primary schools and 299 out of 2,843 own admission authority secondary schools. About ten local authorities said that there were no areas of concern in the arrangements of the own admission authorities in their area. In some cases I am told that, as the own admission authority schools carry on using similar arrangements to those which applied when they were community or voluntary controlled schools, the arrangements are essentially the same and will therefore conform with the Code. I expressed concern in last year’s report that arrangements were not sufficiently closely examined by some local authorities. There was a significant increase in the number of arrangements queried this year. This increased scrutiny is welcomed.
43. The scale of the challenge for some local authorities in providing this scrutiny was illustrated in their reports with several citing the high numbers of different admission authorities in their area. One local authority, with over 200 admission authorities in its area, said that simply collecting the arrangements was a challenge with some schools requiring six or more contacts before determined arrangements were provided. This same authority was aware of changes then made after the determined arrangements had been provided to and checked by the local authority. It is not unknown, in the experience of adjudicators, for schools to have a different set of arrangements on their websites from those provided to the local authority and then published in the composite prospectus.

44. I also asked local authorities to tell me about the aspects of determined arrangements they most frequently queried. Most of the queries appeared to relate to minor matters which were quickly corrected. As one local authority said, *“The majority of schools were keen to address our concerns once they had been raised.”* The most commonly raised concerns were:
- arrangements were not provided to the local authority or not published on the school’s website or both; and
 - arrangements were not clear because they had not been updated for the year concerned or for a change in admission authority; or the arrangements were poorly articulated or internally inconsistent.
45. It is clear that considerable efforts are made by local authorities to make sure that they have the arrangements to publish in their composite prospectus but that this can be challenging. One local authority said, *“The Code assumes that all admission authorities comply with the Code and consult, determine and publish their admission arrangements to meet the published dates. However it is not clear how local authorities should address non-compliance when it has not received a determined policy by the 15 May deadline and therefore is unable to object to the Schools Adjudicator.”* While the deadline for objections is indeed 15 May, the adjudicator does have a power to consider arrangements brought to its attention at any time.

Pupil, service and early years premiums in oversubscription criteria

Table 4: Reported use of premiums across all categories of schools for 2018

Type of premium	Early Years	Pupil	Service	Number of schools using one or more of the premiums
Primary	56	57	136	184
Secondary	n/a	113	43	135
All through	4	9	6	10
Total	60	179	185	329

46. I asked local authorities for information about any consultation on the use of the premiums in oversubscription criteria and on the use of the premiums in arrangements. Table 4 and all the data in this section are based on the information provided by local authorities. Given the number of schools and different admission authorities concerned and the scope for admission arrangements to be changed, the figures should be treated with caution. On the basis of the data provided there are 329 schools using at least one of the premiums in their arrangements for 2018,

some use one, two or three of the premiums. 2018 is the third admissions year for which its use has been possible for all schools. Last year, I reported that six local authorities had introduced priority for children entitled to one of the premiums in at least one of the schools for which they were the admission authority. This year some local authorities had discussed the possibility of introducing the use of the pupil premium with schools but in most instances there was no appetite for it and thus no full consultation held. Five local authorities did consult on introducing at least one of the premiums for their arrangements in 2018. One had no responses and decided not to introduce it and the others introduced its use for specific situations, such as a grammar school or a school near a military base.

47. I also asked those local authorities which had decided not to consult on the use of the premiums or, having consulted, not to use the premiums in oversubscription criteria to give me their main reasons for their decisions. The most common reasons given were that:

- use of the premiums could displace children living locally to a school;
- the needs of the community were already well met;
- admission arrangements would as a result become unnecessarily complicated; and
- in relation to the pupil premium, families entitled to but not applying for free school meals would be further disadvantaged.

48. A further reason was concern about children from families whose means were just above the level required to qualify for the **pupil premium**. One local authority said, *"...while there may be merit in creating a position where a child from a poorer background could be given preferential treatment, it must be understood that such a provision means that a child could be prevented from accessing their local school simply because it is a working family in marginally better financial circumstances and this is not popular with the public."* Other comments from local authorities included that:

- their current arrangements supported an appropriate socio-economic mix in schools which reflected that of the area as a whole;
- the level of eligibility for free school meals was so high across the area that children not eligible for free school meals would be seriously disadvantaged by the introduction of priority for those entitled to the pupil premium;
- the proportion of good and outstanding schools was so high that there was no potential benefit to children eligible for one or more premium; and
- a very high percentage of parents were offered their first preference school so there would be no purpose in further complicating the arrangements.

49. Two other local authorities told me that they had modelled the potential effects of introducing the pupil premium based on applications in previous years. They came

to the conclusion that very few children would benefit and this was not sufficient to outweigh the additional complications to admission arrangements this would bring along with the necessary work to introduce such a criterion. Twelve local authorities raised concerns over proving eligibility particularly in relation to children living in another local authority area.

50. I turn now to those local authorities and admission authorities who are using one or more of the premiums. What is very clear is that while the number of schools who use the premiums in their oversubscription criteria is relatively small, the range of schools in which they are used is very wide indeed. We found examples of schools with PANs as small as 10 and as high as 325. According to the information on the government register, GIAS (get information about schools), the proportion of children in receipt of free school meals across these schools ranges between zero and over 40 per cent. Generally, the proportion of pupils entitled to free school meals in schools with premium eligibility in their oversubscription criteria is lower than is the average for the local authority area as a whole.
51. The information provided to me suggests that while the **pupil premium** is not being used in any community or voluntary controlled primary schools for 2018 admissions, 109 community or voluntary controlled schools spread across nine local authorities have either or both the **service** or **early years premiums** as part of their oversubscription criteria. In 80 of these schools priority is given to children entitled to the **service premium**. While many local authorities said that they had few children eligible for the service premium and would not be adopting its use, two local authorities with concentrations of service families reported its adoption for all of their community and voluntary controlled schools and their encouragement for own admission authority schools to do likewise.
52. One local authority includes the **early years premium** in its oversubscription criteria for 22 community and voluntary controlled schools. Its estimate is that about five children have gained a place that would not have done otherwise in each of the last two years. Of course, how the premium is used will affect its impact. Here the early years premium is the sixth oversubscription criterion in the arrangements. The local authority is working on raising awareness of the criterion so that more parents complete the necessary supplementary information form. It is only possible to be eligible for the early years premium if the child is attending a pre-school provision. There were concerns expressed, in addition to the reasons given above with regard to not consulting on the pupil premium, that use of the early years premium might not be to the benefit of the most needy children if they did not attend pre-school provision.
53. Eighty own admission primary schools reportedly use one of the premiums; the service premium is the most commonly used with 56 schools using it, 50 use the pupil premium and 31 the early years premium. More voluntary aided primary

schools (33) use one of the premiums than any other category of own admission primary school and 25 of them use the service premium.

54. At secondary level, 93 of the 163 grammar schools in England are reported as using one or more of the premiums, the majority the pupil premium or part of it (often free school meals eligibility). Many give the highest priority in their oversubscription criteria, (after looked after children and previously looked after children who meet the required standard in their ability tests) to children eligible for the pupil premium who meet the required standard. Others designate a set number of places for children entitled to the pupil premium who reach the required standard. A small number set a lower pass mark than for other children. Other grammar schools use the pupil premium as part of a tie-breaker between two children who have equal marks for the last available place. This latter approach is not likely on its own significantly to increase the proportion of children eligible for the pupil premium being admitted.
55. Forty-two other secondary schools (including studio schools, university technical colleges and two partially selective schools) reportedly use at least one of the premiums in their arrangements with 27 using the service premium and 22 using the pupil premium. Twelve of these secondary schools are relatively newly established, having opened in the last four years.

Co-ordination of admissions at normal points of entry

56. Nearly all local authorities said that the co-ordination of admissions for Reception (Year R) and Year 7 went very well or that there were few problems. Seven local authorities reported more significant problems with the co-ordination of admissions where there were other points of entry (for example to junior or middle schools). Local authorities reported on successful efforts to ensure that all parents understood the application process and actually did apply. There was again a request for a national publicity campaign for the application deadline for primary admissions. One local authority pointed out that the pressure on places made this more important. The consequences for children of being allocated a place at a school further from their home as a result of not applying on time can be significant and vulnerable children are most likely to be affected. Local authorities described drop in sessions in community venues, help given in completing the common application form (CAF) and the use of a text service to remind parents and carers to submit applications. Several local authorities referred to effective working with schools and other local authorities. One local authority was able to tell me that every application for a place had been made online.
57. As last year, a few local authorities expressed frustration at the use of different dates by different local authorities for information sharing. They expressed a wish for there to be nationally set dates for key parts of the co-ordination process. Sixteen local authorities praised the pan London approach for its efficiency and effectiveness. Difficulties in co-ordination were reported by some local authorities

where own admission authorities were not willing to add capacity and admit over their PAN to provide additional places to meet unforeseen increases in need.

58. Some local authorities reported concerns that a small number of own admission authority schools appeared not to be applying their oversubscription criteria when ranking applicants. In one case, a school reportedly refused to provide a ranked order list of those who had named it on the relevant CAF and offered places to children whose parents had not named it on the CAF. More commonly, some own admission authority schools appeared to struggle to meet the requirements of co-ordination. In two areas *“where own admission authorities bought third party services, deadlines were not met, information was not shared and places were not allocated in line with oversubscription criteria.”* Another local authority described how 21 own admission authority schools were up to two weeks late in providing ranked lists of applicants to the local authority. A few schools were reported as acting independently after the national offer day and offering places outside of the co-ordinated admissions scheme.
59. Again, nearly all local authorities report that the admissions process at the normal point of entry served **looked after children and previously looked after children** either well (26 per cent) or very well (72 per cent). The positive picture was similar for **previously looked after children** with most local authorities saying their interests were met well (31 per cent) or very well (66 per cent). Many reports described different parts of the local authority working well together and with schools to ensure these children were admitted to the schools which could best meet their needs. Such good practice was summed up in the following comment: *“The school admissions team works very closely with colleagues in social care and with schools to ensure that a fair process is implemented for children in care. Checks are made throughout the process to ensure that applications are received within the required timescales and, if applications are received late, admission over the published admission number would be agreed where necessary or possible.”*
60. Only three local authorities said the needs of looked after children were not met well. Of great concern was one local authority which reported a lack of understanding and joint working across parts of the local authority combined with resistance on the part of some admission authorities to admit these children. This adversely affected the quality of provision for looked after children and previously looked after children. The report also described the steps being taken to address these matters.
61. As in previous years, a number of local authorities noted that faith schools can give priority to children of the faith above looked after and previously looked after children not of the faith and commented that this disadvantaged these children. One local authority was able to tell me, *“A large number of the faith schools in our area have now made the decision to place all looked after children in one category*

rather than split by faith. This has been led by the Diocese and ensures that more looked after children are able to access outstanding faith schools.”

62. Ninety-nine per cent of **children with an education, health and care (EHC) plan or statement of special educational needs that named a school** were reported to be served well (32 per cent) or very well (67 per cent) by the admissions system. A few local authorities commented on the challenges of finalising a child’s EHC plan so that the child would know which school he or she was going to attend in good time. The one local authority which felt that these children were not well served said, *“Many children have to wait several months after their peers have heard about the school they will be progressing to at transfer. This reduces the time for the child to engage with and prepare for transition between schools.”*
63. Ninety-five per cent of local authorities reported that **children with special educational needs or disabilities but no statement or EHC plan** were served well (53 per cent) or very well (42 per cent). Over 40 local authorities commented that all or most of the schools in their areas had admission arrangements that gave a high priority to those with a social or medical need as permitted by paragraph 1.16 of the Code. A few noted their concerns where own admission authority schools did not include this priority in their arrangements. There were concerns from many authorities that a small number of schools are less inclusive than the majority and that some sought to dissuade parents from applying for a place for their child with special needs.
64. My attention was also drawn to challenges when a child with special educational needs is to attend a school in a different local authority area. Problems were reported to flow from the fact that a local authority seeking to secure a place for a child with an EHC plan in an academy in a different local authority does not have to notify that local authority. One local authority reported that some secondary schools *“feel inundated”* with *“totally uncoordinated requests”* and *“these children take precedence in a process that is otherwise totally coordinated through the maintaining local authority.”* Recognising the differences in approaches between local authorities, one said *“[where] a student moves into an authority without an EHC plan but has previously had access to high levels of resource ... it is then difficult for the new authority to match that level of support as no plan is in place.”*

Appeals for places in the normal admissions rounds

65. The School Admission Appeals Code (the Appeals Code) sets out clear requirements for dealing with appeals for school places, including that appeals panels and their clerk are independent of the admission authority (whether the education functions of the local authority or an individual school) and that those involved are fully trained. For this report, I asked local authorities how many schools they supported with aspects of the appeals process, their confidence that

own admission schools met the requirements of the Appeals Code and for any areas of concern or good practice.

66. Local authorities continue to provide some or all aspects of appeals related services to around 6,600 of own admission authority schools out of 10,259. Eighty-eight per cent of local authorities were either very confident (47 per cent) or had few concerns (41 per cent) that the **admission appeals** for schools which are their own admission authority met the requirements of the Appeals Code. The comments show that local authorities are most confident in the quality of appeals when they are involved in the process; many clearly see value in providing this service to families and schools. Local authorities wrote with confidence of the impartial and professional service that they could provide and the evidence shows that many admission authorities appreciate this by buying into it.
67. Against this broadly positive picture, 11 per cent of local authorities had many doubts about or no confidence in the admissions appeals arranged by own admission authority schools. I received reports of appeals being clerked by an employee of the school concerned and of cases where *“some panel members are told by the admissions authority, before the hearing commences, what decision to give after the hearing has finished.”* In another case it was reported that parents had been contacted prior to their appeal by the clerk and told that the appeal was likely to be unsuccessful and that they should withdraw as other schools were more appropriate for the child. I was also told of appeals being held outside the timeframe laid out in the Appeals Code. Local authorities cited incidences of parents being told that they did not have a right to appeal or that the result was a foregone conclusion. It is important to emphasise that there is no suggestion that poor practice in arranging appeals is widespread but I record these examples here to make quite clear that it is unacceptable.
68. I asked local authorities to provide examples of good practice. Particularly useful examples were a flowchart for the panel showing options for decisions; templates; briefings for heads and governing bodies; and creating a system by which appeals can be submitted online.

In year admissions, fair access protocols and directions

69. I have decided to cover all matters relating to in year admissions in one section as there are consistent themes in the reports relating to difficulties in securing places in year for children who are vulnerable – irrespective of what gives rise to that vulnerability. The reports made to me suggest a significant variation in the willingness of admission authorities to admit in year and that in some cases unwillingness to admit may not be justified.
70. The number of local authorities involved in co-ordinating in year admissions for at least one school of any type was 134, which is the same as last year. Eighty local

authorities commented that it was far simpler for parents when the local authority co-ordinated in year admissions as parents needed only to complete one form and would then receive one offer. In addition, the local authority would know how many children were seeking places in its area at any given time and how many vacancies there were and at which schools. On the other hand, 20 local authorities commented that where schools managed in year admissions, this could be quicker for parents and save money for the local authority. Where parents approached a school directly, the school would be able to give more detailed information about its provision than could be provided by the local authority. One very large shire authority said that its size made it less efficient to co-ordinate all in year admissions and it would prefer that responsibility for in year admissions remained delegated to schools.

71. There is, therefore, a mixed picture. I note also that I am reflecting here only what local authorities tell me. The view from schools, religious bodies, multi-academy trusts and others may be different. All that said, overall, the reports suggest that there are more difficulties in securing timely in year admissions (in particular for vulnerable children) when the local authority does not co-ordinate these. One local authority described the problems thus: *“the system is currently chaotic for parents. They can spend a long time contacting lots of schools and getting nowhere before they finally come to us and we find them a place, by which time the children could have been out of school for weeks if not months. It is our view that the system is broken for parents and often these are our most vulnerable children moving around.”*
72. Seventy-eight local authorities raised concerns that there are increased risks of children missing education where the local authority does not co-ordinate in year admissions. They contend that missing education increases risks to children’s well being and safeguarding and it is very hard for local authorities to keep track of children moving into and out of their area unless they co-ordinate in year admissions. One local authority, which had delegated all in year admissions to community and voluntary controlled schools, said, *“there are a significant number of children and young people reporting to the local authority that they have not been able to secure a school place, despite approaching a number of schools, yet the local authority admission team has no record of the family either being in the area or requesting a school place.”*
73. While several local authorities reported that most schools kept the local authority informed and worked well with them, over 30 reported serious concerns of the practice of some of the schools that managed in year admissions. In addition to not keeping the local authority informed about vacancies and applications, some local authorities were concerned about the way schools handled applications for places in year.

74. Around 20 local authorities raised concerns that parents were not always told by admission authorities of the right to appeal if refused a place in year. As one put it: *“the low incidence of appeals for heavily oversubscribed, own authority, primary schools compared to community schools would indicate that parents are not routinely told of their right to appeal in the case of in year admissions.”* It was also suggested that some admission authorities discourage appeals in order to avoid the costs of holding the appeal. I was also told of concerns that some schools said that they were full when this was not the case when they were approached by parents enquiring about a place and that *“this is most likely to occur if a child has additional needs or English as an additional language”*. Several local authorities also raised concerns that some other schools had adopted a practice of refusing all in year applications on the basis that they were full when in fact they had fewer pupils in the relevant year group than the PAN which had applied to that group. Some schools were also said to be tardy in responding to applications for places in year.
75. Several local authorities sought nationally set timeframes to facilitate consistent, appropriate and timely ways of managing responses to in year applications. Local authorities can find it particularly challenging to secure admission of children in Year 6 or Key Stage 4 and report concerns on the part of schools that the admission of such children may have an adverse impact on the school’s performance as shown in nationally reported results.
76. Twenty local authorities commented that they managed all or most of the in year arrangements and considered that was cost effective and resulted in widespread confidence that the process was impartial, objective, consistent in approach and transparent. Thirteen local authorities said that they would welcome the return of all in year admissions being co-ordinated by the local authority. Still others, which co-ordinated some but not all in year admissions (for example, managing primary but not secondary), felt that they had struck an effective balance.
77. Many **looked after children** need a new school place in year. I was told of good practice in securing such places with an emphasis on co-ordination within different parts of the local authority and effective working with schools. One local authority explained their arrangements as follows: *“A multi-agency officers group meets weekly to find solutions for admissions and expedite start dates for children. The virtual school and admissions team sit under the same service manager which supports our processes.”* For looked after children, delays in securing a new school place when one is needed can have particularly serious consequences, including jeopardising a foster placement but some admission authorities appear to seek to delay or discourage the in year admission of looked after children. One case was reported to me as follows: *“...in March 2017 the local authority referred a case to the ESFA for direction for an academy to comply with the binding decision of the independent appeals panel to uphold an appeal to admit a Year 5 looked after child. To date (5 July 2017) no direction has been made.”* I must emphasise

that where there are problems with securing a school place for these children these are rare and involve only a small number of admission authorities. As one local authority reported, *“When it has been necessary to change the school of a looked after child mid year, schools and academies have always been willing to go over number to admit the child.”*

78. Some looked after children need a school place in a local authority area which is not the area of the corporate parent. This is usually in consequence of a child being fostered or placed in other accommodation away from his or her home area. This year, following a suggestion by one local authority, I asked about how well the needs of looked after children were met in such circumstances. Eighty-six per cent of local authorities said needs were met well (45 per cent) or very well (41 per cent). However, 40 local authorities (including several of those who reported the system working well or very well) commented that they had experienced some difficulties in meeting the needs of looked after children living outside the local authority’s own area. It seems that while teams within a particular local authority do work closely and effectively to meet the needs of looked after children, it is harder to create such effective links across local authority boundaries. As one local authority said, *“although school places have been found for all, there have been delays due to the time taken to arrange meetings with staff who have to travel long distances and also because the placing local authority does not have knowledge or relationships with local schools.”* Some individual admission authorities were reported to be reluctant to admit the children concerned. One local authority described how, *“Academies in general but especially those in other local authorities present more significant issues when admitting looked after children. Not responding to emails, phone calls, in person visits, lack of co-operation in supplying information and clarification on reasons why they would not want to admit a looked after child are just some of the tactics used. The mode of verbal and body language used often leaves a negative experience for both the adult and the child involved.”* I say more about in year admissions of children with special needs below but note that there seem to be particular challenges in securing appropriate provision in year for looked after children who also have special needs. This was summed up by one local authority which said, *“Admission of looked after pupils with education health and care plans often takes too long as files are moved between local authorities and consultation periods cannot start until panels have met and there is approval required between local authorities.”*
79. I was given examples of good practice amongst local authorities involved including virtual heads meeting on a regular basis and the use of networks across local authorities. More common, however, were reports of confusion about the right process to follow, the lack of a single point of contact in other local authorities, the lack of influence of virtual heads in other local authorities, and delays resulting from the infrequency of meetings of those with the authority to make decisions and the need for several panels to meet. The possibility of agreeing protocols across

an area comprising several local authorities was suggested as a way of addressing some of these challenges.

80. A small number of local authorities report that very significant numbers of children from other areas have been placed in foster care in their area and these children are likely to require in year admissions. These local authorities are concerned that not enough consideration has been given to the education of these children when decisions are made about foster placements and to the capacity of local schools to make the necessary provision. In the most concerning cases, I was told of children at risk of sexual exploitation being placed in areas where there were known high child sexual exploitation risks.
81. Securing places for **children with special educational needs** in year presents challenges with some admission authorities reported as being unwilling to admit. In one case a school refused to respond to any communication about the admission of a child with an EHC plan. Local authorities find it particularly difficult to secure the admission to school of children with social, emotional and mental health difficulties. A number of local authorities drew attention to problems when children move into an area with undiagnosed needs and the consequent challenge for schools and the local authority to identify and meet those needs. Some ten local authorities drew particular attention to the challenge of finding places in year for children who are **looked after children who also have special educational needs**. This would include meeting the needs of looked after children who had not been in mainstream education for some time (possibly attending some form of alternative provision) or not been in one place for long enough for their needed EHC plan to be finalised but their need was for a placement in specialist provision.
82. Last year, I noted increasing concern on the part of some local authorities about the challenges of making appropriate provision for children coming from abroad, including those who are unaccompanied asylum seekers and children with special educational needs. Some of these children have little or no documentation and it can be difficult and time consuming to assess their needs. Where these children have experienced traumatic events, the challenges become greater still.
83. While local authorities again raised concerns about children coming from abroad, they also gave examples of strategies being developed to help meet the needs of these children. Examples of such strategies given to me include:
- interim provision at a mainstream secondary school where children from abroad with a low level of English have up to six weeks intensive language teaching before joining normal classes at a mainstream school;
 - placing children outside the normal age group if appropriate; and
 - commissioning places in alternative provision to get a child into education as quickly as possible, including as a stepping stone to mainstream provision.

84. In addition to this work relating directly to securing a school place, local authorities described the importance of educational psychology support, and working with partner agencies to identify and meet needs. Less positively, one area described: *“ongoing challenge with extreme levels of behaviour from some communities and a pattern of returning to their country of origin to avoid exclusion before returning and re-applying for schools that are reluctant to re-admit them.”* Another local authority said, *“We have experienced some difficulty in placing refugee children who appear physically older than their cited age. Schools have raised concerns about admission of ‘age disputed’ pupil for safeguarding reasons and the local authority takes the view that these concerns are justifiable.”*
85. Some of the children seeking an in year admission will fall within the scope of the **fair access protocol** (the protocol) that must be agreed for the local authority area. I was told by 94 per cent of local authorities that children covered by the protocol were either served well (58 per cent) or very well (36 per cent) by the protocol. As one said, *“The secondary Fair Access Panel is an example of collegiate working at its best. It has given the local authority much needed and appreciated support in coping with the current pressures/demands on special educational provision. All secondary schools sit on the Panel and they regularly offer vulnerable children with complex behavioural issues a third (or more) chance in high school. Schools from all sectors have admitted (some above number) asylum seekers and refugee children. Their support has helped that these vulnerable families feel welcomed.”*
86. It is clear from the reports provided to me that protocols are tailored to the needs of their areas and that overall they do much to support the timely admission to schools of children who find it hard to secure a place outside the normal admissions round. While some protocols include only the groups of children required by the Code, others extend their reach, for example to cover all key stage four children who are without a place. One local authority included service children in their protocol recognising that service families may move at short notice.

Table 5: Use of Fair Access Protocols (2016 data in parenthesis)

	Primary	Secondary	Total
Admitted via the protocol	7,486 (11,166)	10,615 (9,301)	18,101 (20,812)
Refused admission	736 (877)	1,102 (636)	1,838 (1,547)

87. The information in table 5 indicates a significant drop in the number of primary school aged children admitted to a school via the protocol compared with the increase in 2016. It is clear, however, from the comments provided that many protocols have been recently revised. Such revisions may have affected the scope of protocols so I am conscious that the information in the table above may not entirely compare like with like across the years. The scope and coverage of protocols across local authorities necessarily affects the numbers of children eligible to be considered for a place via the protocol in each area. While the size of the pupil population varies enormously between different local authorities, this is not always reflected in the numbers placed using protocols. For example, one local authority placed six children using its protocol whereas another much smaller authority secured the admission of well over 1,000 children through the protocol. The number of primary aged children considered under protocols in 2015 was 8,958 with 403 refused admission. It would appear from comparing this figure with those from earlier years that in the last year fewer primary aged children were considered under the protocols than either of the previous two years but proportionately more were refused admission. Similarly there has been an increase in the proportion of secondary aged children refused admission.
88. Of the 152 local authorities, 149 told me that they had agreed the protocol with the majority of the schools in the area. Of the three that had not been agreed, one does not require one for its one school. The other two recorded that the protocol had been agreed with secondary schools and was now in the process of being agreed with primary schools. It would appear that sometimes local authorities actually mean that they have agreed the protocol with the majority of secondary schools when they say it is agreed with the majority of schools. Nearly 40 local authorities commented that they were reviewing their protocols or have recently done so. The focus of some reviews seems to be in order to make protocols fit for purpose for the admission of primary aged children who need a place.
89. Local authorities reported some challenges in agreeing protocols with primary schools. First, and most obviously, the number of primary schools is much larger so there are more schools with which to engage and negotiate. Second, not all children who might be considered for admission under the protocol fall within the definition of excepted pupils for the purposes of the *School Admissions (Infant Class Sizes) (England) Regulations 2012* (the infant class size regulations). Several local authorities reported problems where all the infant classes in an area had 30 children. This causes considerable challenges in finding a school which can admit an additional child and there were some requests that a child meeting the protocol criteria should also be excepted pupils for the purposes of the infant class size regulations. A third factor cited is the relative inexperience, leading to some mistrust, in the primary sector of working with the protocol. Even among those local authorities who reported that their protocol met the needs of children well, there were suggestions that use of the protocols to find places for primary aged children was more challenging. In some cases, local authorities resorted to

finding places at other schools rather than pursuing admission to the schools identified through the protocol.

90. Clearly, protocols work most effectively when there are good relationships and high levels of trust between different schools, and between schools and the local authority. In addition, good working relationships across different agencies within and beyond the local authority enable protocols to work well. One local authority described its protocol as promoting *“effective collaboration between schools, local authority officers and other agencies. Each child is placed in an education provision best suited to their needs whilst receiving support from the relevant services. The protocol promotes early help. It is also a mechanism for schools to seek advice from their colleagues and share best practice.”*
91. Paragraph 3.12 of the Code says, *“Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it **must** refer the case to the local authority for action under the Fair Access Protocol. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. The use of this provision will depend on local circumstances and **must** be described in the local authority’s Fair Access Protocol.”* A number of local authorities said that they believed that children were being referred for action under the protocol by admission authorities relying on the provisions of paragraph 3.12 but where the school did not have a particularly high proportion of children with challenging behaviour or previously excluded children. This causes more work for all concerned and unnecessarily delays the admission of children to school. There were requests for clarification as the wording of paragraph 3.12 was felt to be too open to interpretation and was being exploited accordingly.
92. The overall picture in relation to the use of fair access protocols is positive and encouraging, but a number of local authorities reported that some schools did not seem willing to admit children under the auspices of the protocol. I was told of instances of schools failing to respond to communications about the proposed admission of a child in accordance with the protocol or schools taking an unduly long time to respond. In addition it was reported that some schools: argue that they should not admit a child but do not give any reasons for this; agree to admit a child and then delay the admission; or expect children to be placed in alternative provision when this is not appropriate. Several local authorities echoed the approach that, *“in order to avoid the delay in admitting a child to a preferred school by appealing against decisions [taken by the fair access panel], admissions have been agreed to alternative schools.”*
93. Where a place has not been secured for a child – including through the use of the protocol if appropriate – local authorities can in certain circumstances **direct a maintained school to admit the child** or ask the ESFA, on behalf of the

Secretary of State, to **direct an academy to admit the child**. The adjudicator plays a role in these cases from time to time – either because the ESFA seeks our advice or because a maintained school refers an intention to direct to us.

94. Over 50 local authorities commented on such directions. The comments overwhelmingly showed a view that the direction process could take far too long, is too bureaucratic and results in children – often the most vulnerable - being out of school for prolonged periods. A statutory timeframe for responses to consultation on a proposed direction to prevent long delays was requested. The tension between the different requirements of the protocol and those for a direction for a maintained school to admit a child was highlighted. A direction that a maintained school admit a child can only be made when the child has been refused entry to, or been permanently excluded from, every suitable school within a reasonable distance. Clearly, not every child falling to be considered under a protocol will be in this position.
95. Twenty-one local authorities commented that it takes such a long time to achieve a direction that they avoid them. While it is right to see a direction as a last resort, it is not right that local authorities feel unable to use this approach when it is necessary. As one local authority said, *“A limited number of academies will create obstacles to delay and/or refuse to take children who are harder to place and with the very limited mandate of the local authority and the bureaucratic process to enforce direction, it is the vulnerable children who remain disadvantaged.”* Around 30 local authorities described the steps that they took to try to persuade schools to admit children without resorting to making a direction or asking the ESFA to make one. Local authorities also understandably wish to have constructive relationships with the schools in their area and many feel that using the direction process: *“would not be helpful in maintaining collaborative working relationships with schools.”* Many local authorities have an escalation process which prevents the need for directions and say that most schools collaborate and it is only a few schools where a direction has to be considered. Eighteen of the local authorities commented that the prospect of a direction could be sufficient to persuade a school to admit a child.

Table 6: Number of directions and requests for directions for a school to admit a child between 31 March 2016 and 31 March 2017

	Primary	Secondary	Total
Local authority directed a school to admit a child not looked after	40	28	68
Local authority directed a school to admit a looked after child in their own area	5	6	11
Local authority directed a school in another local authority area to admit a looked after child	3	9	12
Local authority asked the ESFA to direct an academy to admit a child not looked after	8	28	36
Local authority asked the ESFA to direct an academy to admit a looked after child	1	10	11
Total	57	81	138

96. Forty-two different local authorities made 138 directions or requests for directions between 31 March 2016 and 31 March 2017 so over two thirds of local authorities neither made a direction nor asked the ESFA to direct an academy. I note that a request for a direction does not necessarily result in a direction being made. There are striking regional and local variations. Sixty-six directions or requests for directions came from nine local authorities in the north west and one of those alone was responsible for 49 cases. In contrast, there were no directions or requests for directions from any local authority in inner London.
97. Three local authorities made positive comments about their experience requesting the ESFA to direct an academy to admit a child. One said, “*referral to the ESFA was dealt with very promptly and the looked after child was admitted to the school very quickly following resolution.*” The matters relating to placing looked after children in schools in other local authority areas have been covered elsewhere in this report but were echoed in comments on directions where a direction or a request for a direction was needed to secure the admission of a looked after child.

Increase in the number of admission authorities

98. This year I asked specifically about the effect of the increase in the number of admission authorities. Some local authorities’ responses focused entirely on the co-ordination of admissions at the normal point of entry; 33 local authorities said that the increase in the number of admission authorities made little difference. Others took the opportunity also to comment on the effect on parents; 25 local authorities said that it was confusing for parents trying to understand the implications of more different sets of admission arrangements. Nearly 40 local

authorities commented that the larger number of admission authorities generated more work for the local authority as there are more sets of admission arrangements to be checked and not all admission authorities appear to understand their responsibilities. As one local authority said, *“officers need to give more support to these schools, even though we are not specifically funded for this, to ensure that they provide accurate information in respect of admission criteria.”* Twenty-five local authorities said that some own admission authorities either did not understand the Code, or did not properly take notice of its requirements. For example, one local authority described *“occasions when an own admissions authority school has advised the local authority that they are admitting over 30 to an infant class because they are their own admission authority and ‘can do what they want.’”*

99. There were also references to an *“increasingly fragmented”* system and, in particular, that changes to the admission arrangements of one school could have wider and unforeseen consequences across an area. The concerns expressed above with regard to in year admissions and appeals were repeated here. This said, many local authorities also referred to their good working relationships with all the schools in their area.

Other matters raised by local authorities

100. Sixty-one local authorities took the opportunity to raise other matters with me. The most common matter raised was the admission of **summer born children** (children born between 1 April and 31 August) on which 31 local authorities commented. These local authorities reported that increasing numbers of parents were seeking deferred entry for their summer born children so that they were admitted to Year R in the September following their fifth birthday. This is the point at which summer born children reach compulsory school age; it is also the point at which most children in their age cohort will be moving from Year R to Year 1. One local authority reported that the number of requests for deferment had almost tripled in the last three years.
101. Overall, it seems that, on the one hand, some parents now believe that they are entitled to have a place in Year R for their summer born children when they reach compulsory school age as distinct from the actual entitlement to request this and have the request considered. On the other hand, it is also clear (and this is clear too from adjudicator scrutiny of admission arrangements) that many admission authorities are failing to make clear the rights parents do have to ask for deferred entry. This latter fact is extremely concerning to me.
102. Local authorities identified a number of practical implications flowing from requests for deferred entry. The decision about whether to allow deferred entry rests with the admission authority for the school concerned. An admission authority might agree the parent’s request. Should the child not then be allocated a place at that

school, the admission authority where a place is offered is not bound to honour the decision of the first admission authority and may take a different view and allocate a place in Year 1 instead. The reports made to me also suggest that, in some cases, the local authority is effectively making the decision as to whether or not to permit deferred entry to Year R. The Code is clear that this is a matter for the admission authorities of the schools.

103. One local authority illustrated some of the complexities when it said, *“The system is particularly hard to administer where a number of different admission authorities feature on a parent’s application form (particularly when the admission authorities do not agree). This complexity is compounded if the parent is unlikely to get a place (via the normal admissions oversubscription process) at their preferred school.”* There was a strong message of a wish for clarity in the Code on this matter and for this to be developed in consultation with local authorities and others. As part of this, local authorities wanted the Code to address the treatment of applications for secondary school places for children who had been educated out of their normal age group in primary school, including children who might wish to apply for places at selective schools.
104. Elective home education (EHE): four local authorities reported significant increases in the number of children being educated at home and, in particular, concerns that this was not always in the children’s interests. There were disturbing references to children being removed from schools to be educated at home with the encouragement of the school as an alternative to exclusion. One local authority described it thus: *“schools off rolling learners to EHE when the families have no means to educate in order to protect their results records and school performance.”* One local authority with nearly 2,000 children registered to be home educated said, *“the majority have had some form of local authority intervention with a large proportion known to social services.”*

Appendix 1 – The Role of the OSA

105. The OSA was formed in 1999 by virtue of section 25 of the School Standards and Framework Act 1998. It has a remit across the whole of England. In relation to all state-funded mainstream schools, other than 16–19 schools, adjudicators rule on objections to and referrals about determined school admission arrangements. In relation to maintained schools, adjudicators: decide on requests to vary determined admission arrangements; determine referrals from admission authorities against the intention of the local authority to direct the admission of a particular child; decide some school organisation proposals; and resolve disputes on the transfer and disposal of non-playing field land and assets. The 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.
106. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. They look afresh at cases referred to them and consider each case on its merits in the light of legislation, statutory guidance and the Code. They investigate, evaluate the evidence provided and determine cases taking account of the reasons for disagreement at local level and the views of interested parties. Adjudicators may hold meetings in the course of their investigations if they consider it would be helpful, and could expedite the resolution of a case.
107. Adjudicators are independent of the DfE and from each other. All adjudicators are part-time, work from home and take cases on a 'call-off' basis, being paid only for time spent on OSA business. They may undertake other work when they are not working for the OSA provided such work is compatible with the role of an adjudicator. They do not normally take cases in local authority areas where they have been employed by that authority or worked there in a substantial capacity in the recent past. Nor do they take cases where they live or have previously worked closely with individuals involved in a case, or for any other reason if they consider their objectivity might be, or be perceived to be, compromised.
108. In September 2016, there were nine adjudicators, including the Chief Adjudicator. One adjudicator retired in November 2016. Four new adjudicators were appointed in the spring of 2017 so there were 12 in post at 31 August 2017. Adjudicators are supported by five full-time equivalent staff based in the DfE's Darlington office. The Secretary to the OSA leads these staff well and they are much appreciated by the adjudicators for their hard work, knowledge, efficiency and good sense. The 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 fell compared with the previous financial year. Full details are given in Appendix 2.

109. The OSA receives legal advice and litigation support as necessary from lawyers of the Government Legal Department (GLD). 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 or barristers with expertise in education law. 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. In this reporting year, two applications were made for judicial review of adjudicator decisions. In the first, the application was withdrawn with the consent of the Court and in the second, permission for judicial review was refused by the Court. There were therefore no successful challenges to adjudicator determinations.
110. At the completion of each case, the OSA seeks feedback from all involved on how the matter was handled. This year 356 feedback forms were issued and 46 responses received. The great majority of those who responded were satisfied with the service provided by the OSA staff and by the adjudicator assigned to the case and felt that they understood our processes and were kept well informed of the progress of their case. The OSA received two complaints about the handling of cases both from the same individual who had objected to the arrangements of a number of schools.

Appendix 2 - OSA Expenditure 2016-17 and 2015-16*

Category of Expenditure	2016-17 £000	2015-16 £000
Adjudicators' fees	329	405
Adjudicators' expenses	16	19
Adjudicator training/meetings	48	62
Office Staff salaries	160	150
Office Staff expenses	5	5
Legal fees	36	40
Judicial Review Costs	0	100 ¹
Administration/consumables	1	1
Total	595	782

Note:

*Information relates to financial years 2015-16 and 2016-17. The report covers the academic year 2016/17.

¹ 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 \(decisions carried forward from previous year in parenthesis\)](#)

Table 3: [Directions to maintained schools to admit children and advice to the Secretary of State on requests for an academy to be directed to admit children \(cases carried forward from previous year in parenthesis\)](#)

Table 4: [Reported use of premiums across all categories of schools for 2018](#)

Table 5: [Use of Fair Access Protocols \(2016 data in parenthesis\)](#)

Table 6: [Number of directions and requests for directions for a school to admit a child between 31 March 2016 and 31 March 2017](#)



Office of
the Schools
Adjudicator

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