



Office of  
the Schools  
Adjudicator

# Office of the Schools Adjudicator Annual Report

1 January 2022 to 31 December 2022

**April 2023**

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## Introduction and executive summary

1. This report to the Secretary of State for Education (the Secretary of State) covers the work of the Office of the Schools Adjudicator (OSA) during the calendar year 2022 and local authority reports made to me in accordance with the School Standards and Framework Act 1998 relating to the academic year September 2021 to August 2022. As always, I hope that the findings drawn from adjudicator casework and from local authority reports will be of use to the Secretary of State, Ministers and officials, local authorities, faith bodies, academy trusts and school governing boards.

2. Part 1 of the report deals with adjudicator casework. Part 2 of the report summarises the local authority reports. This year, for the first time, those reports covered the whole of the preceding academic year and it is also the first year for which reports were made against the backdrop of the new School Admissions Code (the Code) introduced in September 2021. At the request of the Department for Education (DfE), we asked local authorities to answer in their reports a small number of questions about the changes introduced in the new Code, particularly in relation to in-year admissions.

3. In terms of OSA casework, during the period covered by this report, the number of new cases submitted to the OSA was 318. This was an increase compared with the 297 submitted in 2021, but this year's numbers were within the ranges seen over past years.

4. We began the year with nine **objections to and referrals of admission arrangements** which had been made in 2021 but not completed. A further 205 new objections and referrals were made by the end of December 2022. We completed 208 cases by the end of December 2022 and so carried six cases forward into 2023<sup>1</sup>, including one which was subsequently found to be out of jurisdiction as it related to 2024 arrangements which were still in draft form<sup>2</sup>.

5. At the beginning of the year, we had nine requests for **variations** carried forward from December 2021. By 31 December 2022, we had received 78 further requests for variations. We completed 74 variation cases in 2022 so 13 – all received in November and December 2022 - were carried forward into 2023.

6. The number of referrals of a local authority's notice of intention to **direct a maintained school to admit a pupil** combined with the number of cases where the Secretary of State **requested advice on the admission of a child to an academy** was

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<sup>1</sup> All of these were submitted after the 15 May deadline for objections to admission arrangements but were considered by the adjudicator using the discretionary power to do so as it appeared that the arrangements did not conform with requirements relating to admissions in significant ways.

<sup>2</sup> The adjudicator has jurisdiction only for determined arrangements. The deadline for determining 2024 arrangements is 28 February 2023 and in this instance arrangements which were in draft had been erroneously labelled as determined arrangements.

33. We had brought forward three cases from 2021. A total of 34 cases were completed during the year and so two were carried forward to 2023.

7. We received and completed one **statutory proposal**, compared with five in 2021 and one **land transfer case**, compared with two in 2021.

8. The work of the OSA has in the past decade been highly seasonal as the bulk of our work has concerned objections to admission arrangements which are naturally made between the 28 February deadline for determination of arrangements and the 15 May deadline for objections. However, the increasing number of requests for approval of proposed variations and for advice to the Secretary of State on whether academies should be directed to admit named pupils has somewhat smoothed the workload over the year. These cases can be referred to us at any point of the year and have more than offset the continuing fall in the number of statutory proposal and land transfer cases which can also arise at any time of year.

**Shan Scott**

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**Office of the Schools Adjudicator**

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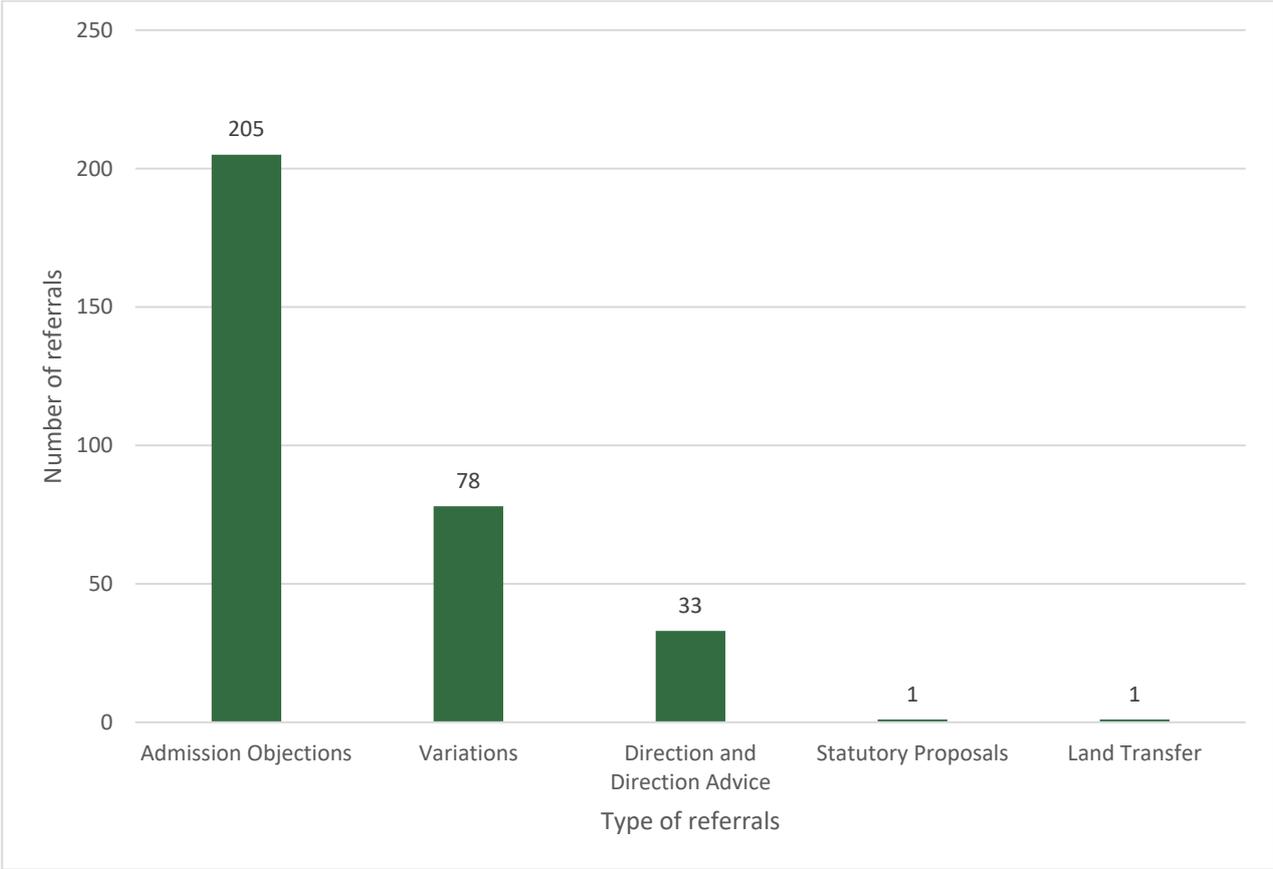
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## **Part 1 - Review of OSA work in the period 1 January 2022 to 31 December 2022**

9. We began 2022 bringing forward from 2021 nine objections to and referrals of admissions cases, nine requests for variations and three for advice on the admission of named pupils to academies/requests for directions to maintained schools. While there is a deadline for objections to admissions arrangements, which means that this element of our work is seasonal and peaks in the summer, other types of case can be and are referred at any point of the year. It is inevitable that some cases will be referred to us in one reporting year but completed the next. For example, of the cases referred in 2022 but completed in 2023, both requests for advice on the admission of named pupils were made in December and the variations were sought in November or December.

10. In 2022 the numbers of requests for variations to determined arrangements and requests from the Secretary of State for advice on whether a named academy should be directed to admit a child made the work of the OSA somewhat less seasonal than in previous years. This year, however, referrals of directions to maintained schools to admit children and requests for advice on whether an academy should be directed to admit a child showed something of a seasonal pattern of their own this year. We received two referrals of local authority directions and 31 requests for advice – a combined total of 33. Of these, 14 of the requests were made in November. November was also a busy month for requests for approval of proposed variations to the determined arrangements for maintained schools as 13 such requests were made. All that said, May remained the peak month for referrals with 164 cases referred (152 objections to admission arrangements, 11 requests for approval of variations and a land transfer case). The number of new cases referred to us during the year was 318 as shown by type of case is shown in figure 1.

**Figure 1: New Referrals by type 1 January 2022 to 31 December 2022**



## Objections to and referrals of admission arrangements

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

	1 January 2022 – 31 December 2022	1 January 2021 – 31 December 2021
Number of cases considered	214	150
Number of new cases	205	146
Cases carried forward from previous year	9	4
Number of individual admission authorities within new cases	50	86
Cases finalised	208	141
Objections fully upheld/found not to conform with requirements	131	22
Objections partially upheld	40	43
Objections not upheld	22	68
Cases withdrawn	13	4
Cases out of jurisdiction	2	4
Cases carried forward into following year	6	9

11. As in past years, new cases related to all categories of schools with 15 to the admission arrangements for community and voluntary controlled schools in nine local authorities, 11 to eight voluntary aided schools, two to two foundation schools and 177 to 39 academy schools, including free schools. As last year, non-compliant arrangements were found for every category of school, including schools where the admission authority is a local authority, a board of governors or a multi-academy trust. Parents and members of the public between them remained the single largest group of objectors, accounting for almost 74 per cent of all objections. Local authorities and governing boards of schools were among others who made objections. Table 1 above gives the outcome for each case completed. Of those cases where a conclusion was reached by 31 December 2022, 14 were found to have no fault in their arrangements (meaning that the objection was not upheld, and no other breaches of the requirements were found). In 131 cases the objection was upheld and in 40 it was partially upheld. In eight of the 22 cases where the objection was not upheld, other matters were found not to comply with the requirements relating to admissions. 13 cases were withdrawn and two were found to be outside our

jurisdiction. Six cases were carried forward into 2023. Of the cases carried forward into 2023, five were referred after 15 May 2022. They were considered by the adjudicator using the power under section 88I to consider such cases because the arrangements appeared not to conform to the requirements relating to admissions in significant ways.

12. As in previous years, objections covered a wide range of matters, including the use and fairness of feeder schools and catchment areas in arrangements, the priority given or not given to children based on faith membership and practice, the published admission number (PAN) set for the school and whether arrangements were overall clear and fair.

13. One individual objected to the arrangements of 11 different selective schools. Most aspects of the arrangements complained about in these cases were not found to be in breach of the Code. It is not for adjudicators when considering the cases before them to speculate about the motives of those who have made objections. However, it does concern me that these particular objections appeared to be driven by a wish to change the requirements relating to admissions at selective schools, including the objector's opposition to the use of catchment areas or giving priority to children entitled to the pupil premium or weighting of test scores based on children's ages. Schools are busy institutions and I share their frustrations when they have to deal with objections which reflect the personal views of the objector rather than well founded concerns that arrangements do not meet requirements as they are (rather than as the objector would like them to be). I repeat here that we have no option other than to consider such objections given the statutory duties imposed on us and, in doing so, we strive to keep the burdens they place on admission authorities to the minimum.

14. These cases apart, and as in past years, whether or not objections were upheld, it was understandable why most objections had been made. The single biggest group of objectors were parents often motivated by a reasonable wish that their child should have high priority for a particular school. I hope that where such objections were not upheld, the parents concerned nonetheless understood why the decision had been made and felt that their voices had been heard. It is unfortunately the case that not all schools can accommodate all who would like to attend. Sometimes, a school cannot even accommodate all those for whom it is the nearest school and sometimes there are very good reasons why those living further away may have higher priority. An example of this is where catchment areas have been drawn so that every child will have a high priority for a school within a reasonable distance of their home even if it is not the school which is the nearest to them.

15. Last year, I reported in the section of the report on variations on a number of requests for variations to the PANs for 2022 of voluntary controlled and community primary schools in one local authority consequent on reorganisation from a three tier to a two tier system. I explained that the reduced PANs requested (in one school from 36 to 10) would have resulted in PANs for some schools far below recent admission levels, far below anticipated parental demand for places for the next few years and below the physical capacity of the schools concerned. The requested variations were approved with

modifications in each case to give a PAN which more accurately reflected the capacity of each school taking account of the year groups being added. Against that background, I was disappointed that the local authority then set the PANs for four of these schools lower than the governing boards wished for 2023. Unsurprisingly, the governing boards made referrals to the adjudicator (as did one parent). Paragraph 1.3 of the Code says, “Community and voluntary controlled schools have the right to object to the Schools Adjudicator if the PAN set for them is lower than they would wish. There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator **must** have regard when considering any such objection.” The adjudicator upheld two of the objections having regard to paragraph 1.3 and noting that the PANs set by the local authority would not have reflected the schools’ capacities nor supported parental preference for places at the schools. I was pleased that, following the publication of the determinations, the local authority discussed the PANs with the two remaining schools and increased the PANs so that the governing boards withdrew their objections.

16. We had objections from local authorities and schools challenging admission authorities who were introducing banding or partial selection by music aptitude. The grounds of objection were that the introduction of these forms of selection would render the schools in question less accessible to disadvantaged children. These are obviously serious concerns which were investigated thoroughly by the adjudicator and found to be unsupported by evidence. There appeared to be a resistance to change, which gave the appearance of also being a resistance to local children being offered valuable opportunities. The starting point in the Code is that it is for admissions authorities to determine their arrangements. Both banding and partial selection by musical aptitude are permissible by statute. It is possible that circumstances might arise where any form of permitted selection could lead to an unfairness, but the unfairness would need to be demonstrable and not based upon an argument that the status quo (or established local pattern of admissions) is always to be preferred and preserved.

17. We made a determination about certain oversubscription criteria for a primary school with an Islamic religious character. The school’s arrangements had previously been considered by an adjudicator following an objection from a parent. Solicitors acting for the parent then issued a pre-action protocol asking for the arrangements to be considered again and this request was acceded to<sup>3</sup>. I am reporting at some length on this case because of the complexities of the matters raised.

18. The first oversubscription criterion of concern to the parent gave a priority (limited to a maximum of 25 per cent of places) to Muslim children with at least one parent who had converted to Islam. The parent alleged discrimination under the Equality Act 2010. Schools designated as faith schools may prioritise on grounds of faith and the objection was based on discrimination on grounds of race. The key argument was that some races are wholly or predominantly born Muslims, for example Somalis, and that the children of

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<sup>3</sup> An adjudicator has the power under section 88I SSFA to consider arrangements referred at any time.

two Somali parents could not meet the criterion as a born Muslim cannot convert to become a Muslim and consequently, their children could not meet the criterion. The adjudicator found that this could not be direct discrimination as the criterion did not explicitly refer to any race and there was no exact correspondence between those who could not meet the criterion and any particular race or races.

19. The adjudicator found that the necessary disadvantage arose under provisions of the Equality Act for indirect discrimination. However, the adjudicator went on to find that the criterion provided an advantage to a vulnerable group of pupils as the children of converts and their parents tend to become isolated, losing access to important support networks. The adjudicator found that there were legitimate and particularly good reasons to afford priority to that group of pupils and, with the limit of 25 per cent of places, that it was a proportionate means of achieving a legitimate aim. Consequently, the criterion is not indirectly race discriminatory.

20. The second criterion of concern gave priority to children whose parents had themselves been pupils at the school. The parent's argument was that this was indirect discrimination as children from those racial groups which arrived in England more recently, for example Syrians and Afghans fleeing recent conflicts in those countries, would not have parents who had attended the school as their parents would not have been in England when they were of school age. The adjudicator found that the necessary conditions of disadvantage were met and that although the schools wish to have continuity and an understanding of its ethos and difficulties was a legitimate aim, the criterion, and the disadvantage it gave rise to, was not a proportionate means to achieve that aim. Consequently, that criterion was unlawful and would have to be changed or removed.

21. We have noted this year that a number of admission authorities had not determined their arrangements in accordance with requirements. Arrangements are required to be determined each year, regardless of whether or not any changes have been made.

22. A number of the matters which featured in objections made this year have been covered in past reports. Those reports remain available at [OSA annual report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/OSA-annual-report-2019-2020.pdf). Last year I included in my annual report a table giving details of where further information about particular matters can be found in earlier reports and I include an updated version of that table here.

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

Matter	Annual Report (paragraph numbers in brackets)
Admission outside normal age group (including below compulsory school age)	2016/2017 (23)
Consultation	2015/2016 (24 -26, 49) 2016/2017 (13, 36 - 40) 2017/2018 (20) 2018/2019 (15 – 16)
Catchment areas (including those created by use of “nearest school” criterion)	2015/2016 (36) 2016/2017 (16 – 18) 2018/2019 (18 – 19) 2019/December 2020 (13)
Complexity of arrangements	2015/2016 (45) 2016/2017 (20)
Faith-based arrangements (including that schools with a religious character do not have to have faith-based arrangements)	2015/2016 (41 – 44) 2016/2017 (21 – 22) 2021 (25 – 27)
Feeder schools	2015/2016 (37 – 40) 2016/2017 (18)
Home address	2021 (19 – 24)
Priority for children who have attended a school’s nursery	2015/2016 (33)
Published admission numbers	2016/2017 (26) 2018/2019 (23) 2021 (13 – 18)
Selection and grammar schools	2016/2017 (19) 2018/2019 (22) 2019/December 2020 (14)
Siblings	2015/2016 (35) 2016/2017 (15)
Sixth form admissions	2018/2019 (21)
Summer born children	2015/2016 (34) 2016/2017 (23) 2018/2019 (97 – 98)

## Variations to determined admission arrangements of maintained schools

23. Once determined for the relevant school year, admission arrangements can only be varied, that is changed, in limited, specified, circumstances. An admission authority may propose a variation if it considers there has been a major change in circumstances and such proposals for a maintained school must be referred to the adjudicator. Proposed variations to academy arrangements are a matter for the Secretary of State. Some variations, for example to comply with a mandatory requirement of the Code, do not require approval by either the adjudicator or the Secretary of State as the case may be.

**Table 3:** Variations to admission arrangements

Variation to admission arrangements	1 January 2022 – 31 December 2022	1 January 2021 – 31 December 2021
Total cases dealt with	87	133
Approved	62	91
Approved/Approved with modification	0	8
Not Approved	8	14
Decisions outstanding	13	9
Out of Jurisdiction	0	2
Withdrawn	4	9

24. The total number of variations considered in 2022 was 87, of which 78 were referred in 2022 and nine brought forward from 2021. Following the pattern of recent years<sup>4</sup> the most common variation sought was for a reduction in PANs in primary schools. However, and reflecting an overall reduction in numbers of requested variations, the number of such requests determined did fall somewhat from 91 in 2021 to 70 in 2022. I have commented in the past to the effect that ideally reductions in PANs should be done via the normal process for determining arrangements so that there is consultation and the scope for people to comment and object and not through variations. Indeed, objections were made in this reporting period to reduced PANs and a number of those were upheld as I outline in paragraph 15 above. In 2022, 55 proposed variations to reduce PANs were approved and eight were rejected – mainly on the grounds that the reduction risked frustrating parental choice<sup>5</sup>. I ask admission authorities to be mindful of the timing of requests for variations. Such requests submitted after the deadline for

<sup>4</sup> Leaving aside the very large numbers of variations to the admission arrangements of schools with a religious character to take account of the closure of places of public worship during the Covid pandemic.

<sup>5</sup> These figures do not sum to the total of 70 such requests received in 2022 as they refer to cases completed in 2022 which include cases brought forward from 2021 and exclude those carried forward to 2023.

publication of the composite prospectus and/or when the window for applications is open but before the deadline for expressing preferences will be particularly closely scrutinised by adjudicators. This is because it could be unfair to parents if they express preferences expecting, say, 60 places to be available at a school and that number is then reduced. Requests submitted earlier – so that a reduced PAN can be made known before parents must make applications – or later – so that the actual level of demand can be taken into account are much to be preferred.

25. Apart from proposed reductions to PANs, other reasons for proposed variations included changes to catchment areas following the closure of another school or to make changes to arrangements consequent on other local changes.

## 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

26. Under Sections 96, 97, 97A and 97B of the School Standards and Framework Act, the admission authority for a maintained school may, in certain circumstances, be notified by a local authority that it is to be directed to admit a child. The admission authority for that school can in turn refer to the adjudicator the notification and the adjudicator will then make the final decision. For academy schools, where a local authority considers that an academy would be the appropriate school for a child without a school place and the academy does not agree, the local authority may make a request to the Secretary of State, to direct the academy to admit the child and, in such cases, the Secretary of State may seek advice from the adjudicator. Table 4 shows the total number of such cases (covering both maintained schools and academies) dealt with by the OSA in 2022 and in 2021.

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

	1 January 2022 – 31 December 2022	1 January 2021 – 31 December 2021
Total cases considered	36	31
Maintained schools – decision to:		
• Admit the child	1	1
• Not admit the child	1	0
Advice to Secretary of State to:		
• Admit the child	17	12
• Not admit the child	7	1

	<b>1 January 2022 – 31 December 2022</b>	<b>1 January 2021 – 31 December 2021</b>
Out of Jurisdiction	0	1
Withdrawn	8	13
Decisions outstanding	2	3

27. In relation to maintained schools in 2022, we dealt with three referrals of a local authority's direction to a maintained school to admit a child. In one of the cases, which concerned a looked after child, the admission authority was required to admit the child and in one which involved a child who was not looked after the admission authority was not directed to admit the child. The final case was withdrawn.

28. In respect of academies, local authorities can ask the Secretary of State to direct an academy to admit a named child and the Secretary of State can ask for the adjudicator's advice on whether to make the direction. Most secondary schools are academies and over 80 per cent of referrals of local authority directions or advice to the Secretary of State on requests for directions to academies concern secondary aged children<sup>6</sup>. It is accordingly unsurprising that we receive far more requests for advice to the Secretary of State on academy directions than we receive referrals of directions to maintained schools. In 2022, we considered 33 requests for advice to the Secretary of State on whether an academy should be required to admit a child<sup>7</sup>. Of these, 17 concerned looked after children and 15 of these were children who were being looked after by one local authority but living in another local authority area – sometimes very many miles away from the local authority looking after them. There were no referrals concerning previously looked after children and 16 concerning children who were not looked after. We completed 31 of these cases during 2022 and carried two forward.

29. All direction and direction advice cases are given the highest priority by OSA staff and adjudicators as they involve children and young people who may be missing education. These are also the only categories of cases for which we do not publish our determinations (or in the case of academies our advice to the Secretary of State) on our website. Unlike some other categories of case there is no legal requirement to publish. While we do publish our determinations of proposed variations (for which there is also no legal duty to publish) in the interests of openness and transparency, direction and direction advice cases are about individual children and concern their and their families' personal and, in some cases, special category, data. I have accordingly decided to say a little more about these cases and our findings in general in this report.

30. First, I am glad that we were able in 2022 to complete the majority of these cases

<sup>6</sup> In 2022 the new cases received comprised four relating to primary aged children and 29 to secondary aged children. This covers both directions to maintained schools and advice on directions to academies.

<sup>7</sup>Of these, two were brought forward from 2021 and 31 received in 2022.

in under a month of receiving the case. I reported last year that sometimes it takes far too long to secure the information the adjudicator needs from schools and from local authorities and most regrettably this continued in some cases this year. In some instances cases are referred with very little information about the child or without the relevant history leading to the need for a direction. In others, initial information is provided but one or more parties is then very slow to respond to the adjudicator's questions or to engage with arguments advanced by other parties. Adjudicators can only reach well-reasoned and robust decisions if they have all the relevant information.

31. This year we noted instances of local authorities seeking directions on the grounds that a child could only attend alternative provision if registered at a mainstream school. While the law certainly allows for a child registered at a mainstream school actually to be attending alternative provision (whether by dual registration or other means) there is no legal basis for insisting on this. In the cases before us, it appeared to arise rather from local contractual arrangements or service level agreements. It is not in my view the case that it will be universally necessary or in a child's best interests or indeed serve any useful purpose for a child to be registered at a mainstream school while accessing alternative provision.

32. We also this year dealt with cases where admission authorities appeared not to have understood that in relation to looked after children (in the case of maintained schools) and in the case of looked after and previously looked after children (in the case of academies) the test of whether the child's admission may be refused is not simply prejudice but the higher test of whether admission would seriously prejudice the provision of efficient education or the efficient use of resources.

33. I note above the high proportion of cases involving looked after children where the child concerned was looked after by one local authority but living in another local authority area. These cases present challenges for all. The local authority looking after the child may well not be familiar with schools in the area where the child is living and the concentration of residential homes in some parts in turn leads to higher proportions of looked after children needing places in schools in those areas.

34. We have noted over the past two years a pattern in the spread of referrals across the year. Of the total of 33 cases referred in 2022, 14 (13 relating to academies and one to a maintained school) were referred in November, some 42 per cent. The corresponding percentage in November 2021 was 18 per cent. We will monitor what happens in 2023, so that we can deploy our resources in the best way possible to manage such peaks.

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

35. We did not receive any referrals of proposals to discontinue or establish maintained schools. The sole case relating to a prescribed alteration school concerned a proposal to expand a voluntary aided school and was referred to us because the local

authority had not determined the proposal within the relevant statutory timetable. The proposal was approved in-year, so no cases were carried forward to 2023.

## **Land matters for maintained schools**

36. We also received one request to resolve disputes relating to land transfers, compared to two last year. This was linked to the proposed removal of a school's foundation and it was completed in-year, so no cases were carried forward into 2023.

## Part 2 – Summary of local authority reports

### 1 September 2021 to 31 August 2022

37. As noted above, local authority reports this year covered the whole of the 2021/22 academic year. They were also the first reports made under the auspices of the Code which came into force in September 2021. As part of the Code changes, the deadline for local authorities to submit their reports to the OSA moved from the end of June to the end of October. This was welcomed by many local authorities as it allowed them to report on a full academic year and aligned with their usual data and information collection arrangements. This year 96 reports were received by the deadline and the final report was received on 14 February 2023.

38. The changes to the reporting cycle and the changes to the Code both mean that comparisons with previous years must be treated with some degree of caution as like is not necessarily being compared with like. Moreover, the past two years of reports were made against the background of the Covid-19 pandemic. While Covid-19 continues to have effects, they were much less significant in the 2021/22 academic year than in the periods covered by my previous two reports.

39. The changes to the Code mainly affected in-year admissions and in recognition of this and at the request of the Department we:

- a. asked questions about whether admission authorities had varied their arrangements to give effect to the new Code requirement that children adopted from state care outside England should have the same priority as looked after and other previously looked after children. The responses to these questions are at paragraphs 57- 59 of this report.
- b. asked local authorities to comment if they wished on the effect of the Code changes on in-year admissions and, in particular, if they considered the changes had or had not made it easier for parents to secure places in-year. The responses to these questions are summarised at paragraphs 69 - 71 of this report.
- c. asked local authorities to comment if they wished on the impact of the Code changes on the operation of the FAP. The responses to this are at paragraphs 80 - 82 of this report.
- d. re-instated the question last asked in 2019 about the number of directions made by local authorities for maintained schools for which the local authority was not the admission authority to admit a named child. I say more about this at paragraphs 83 - 84 of this report.

## Admissions in the normal round

40. The overall success of the co-ordination process for admissions at the normal points of entry to schools in recent years has continued. The broad swathe of returns from local authorities reported that the process has again worked well, or very well, in their area. Some have said that even the high percentages of parents receiving their first preferences in previous years have been improved upon this year.

**Table 5:** Percentage of local authorities reporting how well co-ordination worked in each category in the 2021 admissions round (figures in brackets are for the previous reporting year)

	<b>Not well</b>	<b>A large number of small problems or a major problem</b>	<b>Well with a few small problems</b>	<b>Very well</b>
Reception	0	0(0.7)	17(19)	83(80)
Year 7	0	3(2)	22(31)	75(67)
Other years of entry (where relevant)	0(0.8)	0.7(0.8)	15(17)	84(82)

41. For all three categories of age of entry, there was an increase in the proportion of local authorities who reported that co-ordination had gone “very well” and a corresponding decrease in those saying there had been a few small problems. This picture continues the trend which has been evident in recent years of broadly-based improvement. In particular, the slightly worsening year-on-year position for co-ordination of Year 7 admissions noted in my last report does seem to have been reversed. As was noted there, specific problems had attended Year 7 admissions in that reporting period because of the Covid-19 pandemic.

42. Only a tiny number of authorities referred to the pandemic at all this year, and this was to point out the on-going benefits of the improvements which were made at that time to the electronic processing of school admissions and which are now delivering “improved accuracy and reduced administrative burdens on schools.” I reported last year that a small number of local authorities had reported an increase in the number of families who had failed to express preferences for school places by the national deadlines. Local authorities had attributed this to the Covid-19 related lockdowns. However, this trend appears to have continued this year.

43. Further improvements to the Pan-London co-ordination of admissions were once more said by many of the local authorities involved in it to be the reason for there being even greater general satisfaction with the process this year. I was particularly heartened to learn that refugees from Ukraine had benefited from this. As one local authority said:

“Once again, Pan-London co-ordination arrangements went smoothly, and all eligible applicants were allocated school places on Primary and Secondary National Offer Days.

We are pleased to note that late applications for Ukrainian refugees eligible for a school place at a normal point of admission were dealt with speedily and all new children offered school places for September 2022 within days of their arrival to the borough.”

44. A significant proportion of all local authorities again told me that the success they were reporting derived from the quality of their working relationships with schools, or with neighbouring local authorities, or with both. However, although this was a common theme, it remains the case that it is still not the universal experience. A slightly smaller number of local authorities than those reporting good working relationships told me that there continue to be difficulties between themselves and others which affect the admissions process and therefore the children concerned. Last year, the proportion of authorities reporting good working arrangements and those reporting problems were roughly in balance. The picture this year may represent a slight relative improvement in this balance, but it is no more than that.

45. As last year, and again despite not having been specifically asked to do so, some local authorities told me that difficulties persist with own admission authority schools. The most common complaint was of schools which incorrectly applied their own oversubscription criteria, resulting in additional work for local authority admissions teams to rectify these errors. Others spoke of schools not adhering to agreed deadlines, or some which made offers of places directly to parents.

46. One large shire county local authority was unhappy with the practice of some own admission secondary schools who made changes to their PAN during the admission process, saying:

“Year on year more own admission authority schools change their intake number to suit their own circumstances during the allocation process. One school amended its Year 7 intake number at least 5 times during the 2022 process and now have 270 pupils on roll vs a PAN of 210 and another regularly increases its intake to admit all first preference applicants (around 2 FE over PAN) to the detriment of other local schools.”

47. As part of their determined arrangements each admission authority must set a PAN for each relevant age group, that is the age or ages at which children are normally

admitted to that school. Admission authorities are free to admit above PAN and where they do so this means that more children will secure a place at a preferred school. However, all schools need to be able to plan ahead and this is made harder if they are faced with late changes to the numbers of pupils who will be joining them because of decisions made by other schools. I have more to say about PANs in the following paragraphs as well as in Part 1 of this report.

48. Some local authorities again reported that either incompatible information management systems or a failure to adhere to an agreed deadline hampered cross-border collaboration with other authorities. A small number again made a plea for a national date to be set for the exchange of admissions data between all local authorities generally. Others repeated the comments made last year about the particular problems, either within the local authority itself or across authority boundaries, caused by the timetable for completion of Education, Health and Care (EHC) plans. One comment sets out the issue and the complex consequences which can result:

“The deadline for EHCPs to be finalised for Secondary transfer is very late in the normal admissions round process. This affected the Secondary allocation due to the number of plans finalised at this time, which subsequently altered the number of places that could be offered in mainstream schools and impacted on the co-ordination of places with other local authorities.... The SEND, School Admissions and Capital Strategy and School Organisation teams work closely to manage and plan ahead for capacity and work has included new schools and school expansions.”

Another authority talked of the changes it has implemented to mitigate these difficulties:

“A review ..... has streamlined the process in the past two years for children undergoing Statutory Needs Assessments and annual reviews to enable Plans to be finalised earlier in the academic year, of Year 6 particularly.”

49. A number of local authorities drew to my attention the over-capacity in primary school provision which now exists in a number of places and on which I have reported for some in years in the context of the numbers of proposed variations to reduce PANs in primary schools. One large local authority explained the consequences of this, and its own intended response:

“This has resulted in more parents being able to secure a school of their preference ..... However, it has caused anxiety for some schools in terms of decisions around resourcing. In response, our School Place Planning Team will be implementing a programme to manage primary surplus places for reception transfer.”

50. By contrast with primary provision, there are currently pressures in parts of the country on secondary provision as numbers leaving primary school have been rising. One local authority said in this context:

“The LA have 3 years when places for intake into Year 7 will be extremely tight before the intake years start to decrease. ....These problems have arisen following schools’ decreasing PANs to alleviate surplus places and now needing to accommodate 3 bulge years.”

51. Local authorities have again reported that looked after and previously looked after children have been well served, or very well served at the normal points of entry in the 2021/2022 school year. The table below compares the percentages of authorities which responded in each of these categories for the four groups about which information was sought. Again, the table compares these figures with those in my last report.

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

	<b>2021/2022 Well</b>	<b>2021/2022 Very Well</b>	<b>Previous report Well</b>	<b>Previous report Very Well</b>
Looked after children in home LA	6.1	93.3	5.3	94.7
Looked after children in another LA	24.7 (not well/well combined)	75.3	22.3 (Not well/well combined)	77.7
Looked after children from another LA	8.1	91.9	12.1	87.9
Previously looked after children in home LA	12.2	87.8	8.7	91.3

52. It is again encouraging to see that there has been a general improvement from last year, with a higher proportion than was the case last year reporting children have been very well served, as opposed to well served, for three of the four groups. The exception concerns the admission of children looked after by another local authority in the reporting authority’s area. Of the eighteen local authorities who said that the needs of this group had only been well served, two provided me with an explanation of this assessment. These were two neighbouring authorities who have a shared admissions system, and it was stated for each that:

“Certain geographical areas have cheaper housing and a higher number of children’s homes which means one or two schools have a higher proportion of Children in Care than other schools.”

I can only assume that this comment had more relevance for looked after children from other areas than for those of the reporting local authorities, as both had said that the system had served their own looked after children very well. More generally, it may be that this apparent worsening trend for children not educated in the area of the local authority by whom they are looked after is as a result of some effect which local authorities have not yet described to me.

53. Last year I reported an apparent reversal in the previous trend of year-on-year improvement concerning previously looked after children, and referred to comments which had been made about the difficulty which is sometimes encountered in establishing the status of previously looked after children particularly where another local authority had been the child’s corporate parent. I made a general point about data sharing in my commentary last year and although some local authorities again referred to the problem of status verification this year, fewer did so. This may account for the improvement in the proportion of local authorities who have reported that the needs of previously looked after children have been very well served.

54. Returning to the generally positive picture, a large number of local authorities again made particular mention of the work of their Virtual School on behalf of all categories of looked after children. Six local authorities told me about the work which has been done to reduce the prevalence of late applications for school places on behalf of these children, sometimes involving the Virtual School, and sometimes dedicated members of the authority’s admissions team.

55. Local authorities reported in large numbers either that all looked after and previously looked after children are given first priority in the admission arrangements of all the schools in their area, or that all these children had been admitted to the school for which a first preference had been expressed, or simply that all the schools in their area have admission arrangements which comply with the requirements of the Code concerning looked after and previously looked after children. Three reported that schools in their area will always admit looked after and previously looked after children for whom late applications are made, even if they have already admitted up to PAN.

56. A small number of local authorities repeated the concern which I referred to in my report last year that where schools with a religious character give the highest priority only to looked after children of their own faith (as is permitted) looked after children not of that faith may well not gain places. Where there are many such schools and they together represent most of the good or outstanding schools in an area this can limit the scope for looked after and previously looked after children to gain admission to a good or outstanding school.

57. All local authorities, other than five who said that this was not applicable to them, confirmed that children who appear to them to have been in state care outside England have been included in the definition of previously looked after children in the admission arrangements of the schools for which they are the admission authority. Three of the five told me that this matter does not affect them as they are not the admission authority for any schools, and I have confirmed that this is also the case for one further local authority. The fifth is the admission authority for a number of both primary and secondary schools, and it has in fact included these children in its definition, but either misunderstood the question it was asked or made its response in error. I am therefore confident that all relevant local authorities have complied with what the new Code requires in this respect.

58. Some 61.3 per cent of the remaining local authorities told me that they were confident that all schools in their area had included the definition, and 31.3 per cent of authorities that some had. The remaining local authorities (7.3 per cent of the total) said that they were not aware of whether all or some own admission authorities had added this group to the definition in their arrangements. A number of local authorities told me about the considerable efforts which they had made to ensure that schools (and parents) were aware of the new requirements, and some reported the supportive response of all schools.

59. However, the returns as a whole mean that more than one in three local authorities do not have a certain picture of at least this aspect of the admission arrangements of the schools in their area for which they are not the admission authority, which has surprised me. Local authorities are required by paragraph 3.2 of the Code to refer an objection to the adjudicator if they believe or suspect that the admission arrangements of a school in their area for which they are not the admission authority are unlawful. This duty can only be performed if the local authority critically reviews admission arrangements when they are received by it annually, and if this were done local authorities would have certain knowledge of what they contain. I fully appreciate the burdens on all parts of the school admissions system, but I need to emphasise how important this work undertaken by local authorities is in ensuring the legality of the admission arrangements of all state-funded schools, as enshrined in the Code. Local authorities have between 15 March and 15 May each year in which to examine admission arrangements and act as required by the Code should this be necessary.

## **Children with special educational needs and/or disabilities at normal points of entry**

60. Very many local authorities again reported that the needs of children with special educational needs and/or disabilities (SEND) were well served by the admissions system at the normal points of entry. Many reports spoke of the effect of high-quality working relationships between their admissions teams and those working with children with additional needs as the reason for their positive comments.

61. Some local authorities again told me about the dedicated teams that they have established to support this liaison on behalf of vulnerable youngsters. One said:

“The local authority has a dedicated SEND Admissions team that organises Education Health and Care Plan (EHCP) admissions and the additional support packages given to schools as a result of the specific needs of individual students as defined in their EHCP. In order to ensure that children who have had a school named in their EHCP are taken account of in the allocation of places, the Admissions team liaises with the SEND Admissions team prior to the allocation. A Working Together Agreement (WTA) exists which sets out the roles and responsibilities of each team and the timescales that must be met in order to ensure EHCP placements can be taken into account during the mainstream admissions process.”

62. Where local authorities said there were problems associated with SEND admissions, the picture which has been presented to me is much the same as in previous years. The issue which has again dominated local authority responses is the relationship between the deadline of 15 February for finalising EHCP revisions when children move between phases of education, and the school admissions timetable. Most of the twenty-or-so expressing concerns did so in relation to secondary transfer and the national offer date of 1 March for Year 7 admissions, saying typically that:

“Whilst the number of EHCPs finalised by the statutory 15 February deadline has improved, there are still instances of EHCPs being finalised after this date, meaning less transfer and integration planning time for the families and schools. It also results in schools having to go over PAN because it was too late for them to be included in the co-ordination process leading up to offer day, creating pressure on schools in terms of classroom management and staffing.”

63. The potential consequences for schools where EHCPs are finalised at a late stage are clearly of significance in the minds of many local authority admissions teams. So while many have reported on their success in avoiding schools needing to admit over-PAN as a result of good working practices between their teams, another significant group have again called for there to be changes in the statutory deadlines so that EHCPs would have to be completed earlier. I cannot but reflect, first, that while over-PAN admissions to accommodate children with an EHCP are clearly not ideal, they nevertheless result in these children achieving a place at a school most appropriate to their needs. As such, they serve the interests of this group of children (which is what I asked local authorities to report on) and so consequential concerns, real as these may be in terms of the management of schools, should not be the paramount issue. Second, although some local authorities have reported that unavoidable staffing difficulties have led to the late finalisation of EHCPs, it is clearly possible within the current framework largely to avoid these issues where local authorities have been able to manage their own teams proactively to this end.

64. Less manageable for local authorities are problems which result from the actions of neighbouring local authorities. Several again reported the following sorts of issue:

“Applications from neighbouring authorities have caused a few issues as they can consult directly with the schools without informing the SEN Casework Team, and there is no requirement to inform the LA where the school is located. If the receiving school does not pass on that information to us, we are not aware that a place is required for an SEN child from another LA.”

One said:

“There needs to be a greater duty on local authorities to share details of out of County placements with the maintaining local authority for the school” and another that:

“New guidance establishing and promoting a “joined up” approach between schools and LAs for EHCP allocations would be welcome.”

65. It is most concerning that local authorities continue to report, some for the first time this year, that some schools (not necessarily own admission authority schools) resist the admission of children with EHCPs. One set out the problem faced by some local authorities graphically:

“.....it is not uncommon to receive a response to formal consultations under the Children and Families Act 2014 from mainstream schools stating that they would not be a suitable school. The quality and detail of these responses are variable and there are very similar responses from groups of schools or schools within an academy trust. Whilst the LA challenges where appropriate to do so, in some cases where discussions have taken place between the school and a family, the family has lost confidence in the school’s ability to meet their child’s needs. The family will then request an alternative, or specialist placements and in some cases, they pursue this through the SEND Tribunal process.”

One put this issue more simply:

“..... many schools are not open to receiving children with EHCPs. I have been told by SENCOs that there is a tension between wanting to be inclusive and also feeling the pressure of knowing that the school will be judged on attainment.”

Another local authority told me that it believed that difficulties faced by schools in recruiting appropriate staff, especially support staff, lay behind this increasing resistance to admit children with EHCPs.

66. One local authority told me about its experience of increased pressures which remain in place following COVID -19 as follows:

“There is an increasing challenge of children and young people coming through at nursery and reception age, who have additional needs (whether SEND or not), as a result of Covid 19 delays and absences from settings and services. These needs are not always known to professionals and therefore cannot be shared with schools. This impacts on behaviour, social interaction and communication, inc.

speech and language, which can be a challenge for schools to address in the current climate.”

67. Some local authorities again told me that there is pressure from parents for specialist school provision for their child, and for the first time this year a small but significant number of local authorities told me that the sufficiency of their specialist provision in schools and /or special units is under considerable pressure. Others told me that they are making capital investments to expand their specialist provision.

68. I can again report that local authorities have told me that approaches to the admission of children who have additional needs but who do not have an EHCP diverge – with one group content that many schools give a high priority to children with additional social or medical needs, and another group encouraging schools to have no regard to such matters but simply to act inclusively in making admissions.

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

### **In-year admission processes**

69. The new provisions in the Code set out timescales for decisions on in-year applications. Some 136 local authorities took the opportunity to comment on the changes. As might be expected the experiences and views reported ranged quite widely with some saying that the changes had not led to them making any changes to their existing procedures to others who have commented that the timescales have been helpful in providing” a consistent framework across admission authorities.”

70. There was also a good deal of variation in the comments on whether the changes had proved helpful for parents who were seeking in-year places for their children. Some local authorities pointed out that the new timetable equipped parents to challenge the local authority or individual admission authorities on the time being taken to secure a decision on an application with the implication that this helped to prevent drift or delay while others again said the changes have had little or no impact. One authority reported positively:

“The updates to the Code in giving more prescribed timescales has had a positive impact on parents securing in-year places, the LA is now able to apply this when liaising with schools.”

71. It is the case that there is significant variation from local authority to local authority in terms of in-year co-ordination with some local authorities co-ordinating on behalf of all or most admission authorities in their area and some where there is little such co-ordination. It is also fair to say that views about the best approach may be vary widely also. One authority commented:

“We believe the co-ordination of in-year transfers should be a statutory duty to ensure the process is carried out in a fair and consistent manner. We have

experience of schools delaying admission, resulting in children not being in education for periods of time.”

Another authority said:

“The changes to the code have not made a huge effect on our in-year processes as they were already robust before the changes. Parents applying in the borough have always been able to secure places in year. We are fortunate as a borough we coordinate in year admissions for all schools.”

On the other hand, a different local authority commented:

“We firmly believe that parents applying directly to ‘own admission authority’ schools for in-year places is much better for parents and children.”

72. The new Code contains a definition of challenging behaviour and a number of local authorities commented positively on this:

“The inclusion of a clear definition of what is meant by challenging behaviour and of the very limited circumstances under which schools can refuse an in-year application on this basis has also helped us to challenge schools who refuse to admit.”

“Further clarity on the definition of ‘challenging behaviour’ for the purposes of refusing admission has also been welcome as part of the changes to the Code.”

“The detailed definition of ‘challenging behaviour’ has introduced a clearer threshold for admission authorities and has enabled us to provide pushback to schools wishing to refuse admission on this basis.”.

73. However, there were some comments which suggested that the new definition has been interpreted in different ways by different organisations. One local authority said:

“There have been instances where schools are refusing to admit when they have places available. This relates to a difference in opinion in what constitutes challenging behaviour and prejudice. Consequentially this has resulted in delays with offering school places in some instances.”

## **Looked after and previously looked after children**

74. Many local authorities spoke positively about the priority they give to placing children in appropriate provision as quickly as possible. The need for strong relationships between the Virtual School, the local authority and all admission authorities is essential:

“The best practice is always underpinned by effective and supportive communication, good local protocols and shared ownership of the need for speedy admission to the most appropriate educational provision between all parties involved.”

75. However, a number of local authorities are not always clear about some of the provisions in the Code:

“There is confusion about the appropriateness of placing LAC / PLAC pupils on waiting lists, there is conflicting information regarding this issue which still needs clarification by the DfE.”

“There can sometimes be challenges around in-year placements for LAC and PLAC due to lack of information on the child and pressures for schools that are full and exceeding PAN.”

76. In previous years I have drawn attention to the practice of some schools of using the PAN which applied when a particular cohort joined the school to determine if that particular year group is full. I do not miss an opportunity to draw attention to paragraph 1.4 of the Code which states unequivocally that the PAN applies only to the relevant age group. The test for whether a child should be admitted as part of a normal in-year application for admission to all other year groups is whether prejudice to the efficient use of resources or efficient provision of education will arise. Whether or not there will be prejudice is not simply a function of whether or not the number of children in the year group will be higher or lower than the PAN that applied when that cohort joined. I remain concerned about an apparent lack of awareness of what the legislation as well as the Code provide. One local authority set out its concerns as follows:

“The LA has reiterated the necessity to offer a place, without condition, where places are available at the time of application. We have raised concerns that in-year capping by some schools may be an attempt to avoid more challenging in-year admissions.”

77. I am concerned too, however, that some local authorities may be under misapprehensions about PANs as some comments suggest that they too believe that PANs apply beyond the normal year of entry. One said in this context:

“It is disappointing that the new Code has not provided clarity on capping higher year groups with an expectation that the PAN moves through the school with the intake cohort, unless there are exceptional circumstances (linked to school organisation and finance) that the school must clarify before implementing a cap. An academy’s Funding Agreement makes clear that academies are expected to admit to PAN in all year groups, but this requirement is not checked or audited. We would welcome guidance that requires all admission authorities to:

set any changes to the published intake number for higher year groups at the start of the academic year and remain with that number ( or a higher number) for the whole year, allowing LAs to publish accurate vacancy information as required

publish their rationale for “capping” higher year groups that would provide clarity and transparency for parents and Independent Appeal Panels.”

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

	Not at all	Not well	Well	Very well	Not applicable
Looked after children	0	0	51	100	1
Children looked after in other LA areas	0	14	91	43	4
Looked after children from other LA areas but educated in your area	0	2	59	90	1
Previously looked after children	0	1	53	97	1

## Children with special educational needs and/or disabilities

78. Some authorities report increased demand for places both for those with an EHCP and those who have identified special needs but do not have an EHCP.

“For those with EHC Plans needing specialist provision there is a challenge in that our specialist schools and increasingly also independent specialist schools are oversubscribed. This can lead to delays in identifying appropriate placements.”

79. A particular challenge is where children have moved to the UK but have not been assessed for any special needs. One local authority said:

“There is a resource/safeguarding issue for schools where pupils present with a high level of SEN needs, but they do not have an EHCP this is generally pupils who have moved to the UK from abroad. This can sometimes delay the admissions of these pupils, whilst schools plan, in consultation where appropriate with the Council’s SEN team, the integration of these pupils into school.”

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

	Not at all	Not well	Well	Very well	Not applicable	Don't know
Children with an EHCP	0	9	65	77	1	
Children who do not have an EHCP	1	7	89	47		8

## Fair Access Protocol

80. There were a wide variety of comments from local authorities on the changes in the Code in relation to FAPs and the requirements for FAPs. While different comments singled out different aspects of the changes most were positive, as these examples show:

“The changes have ensured that the focus of our local Protocols is now specifically on those defined by the Code.”

“The introduction of the 20 school day timescale between the acceptance of a referral is helpful in ensuring that vulnerable children are placed quickly. The introduction of the prescribed criteria for placement under the Fair Access Protocol has also been helpful, as has the clarity provided in the definition of children with challenging behaviour.”

“We’ve used the code changes to inform practice and to review FAP procedures in the LA. These have been simplified in line with the admissions code.”

“The changes have had a positive impact, although the [LA’s] Fair Access Protocol is well established and been working efficiently prior to the changes. The timeline given in the SA Code has aided faster resolution of the majority of cases.”

81. While some local authorities which reported that their FAPs already worked well thought that the Code changes had not had much impact on them, some others appeared to consider that the changes had not gone far enough:

“The perception of what constitutes a valid reason for the application of the fair access protocol varies considerably amongst schools. Some schools are referring far too many cases when they should in fact be dealt with through the normal in year procedures. Some schools are using the fact that a child meets the fair access criteria as a reason for refusal rather than as it is intended as a way of securing school places for the most vulnerable pupils.”

82. Where local authorities did express concerns about changes to the provisions relating to FAPs, these were mostly about the provision in paragraph 3.17 of the Code limiting the categories of children eligible for consideration under the FAP and the lack of scope for local discretion to include other groups of children. In particular, there were concerns about the requirement for a child who could not be found a place through the normal in-year procedures to have been out of education for four or more weeks before referral to the FAP. Comments included:

“The LA currently has capacity issues with respect to school places primarily in the secondary sector with a number of year groups being ‘full’ based on schools determined admissions numbers. This means that when families move into the area, we are not always able to offer places through the ‘in-year admissions’ process and the children are unplaced. However, we note that the relevant fair access category refers to ‘children who have been out of education for 4 or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home’. We feel it would be useful to remove the 4 week requirement which would enable these unplaced children to be placed more quickly.”

“The 2021 Code does not allow for the discretionary category of children new to the area who are refused admission on arrival and would therefore be unable to access local, suitable education. A child would need to be out of education for four

weeks. The aim of ending practice in some areas of the country to consider increasingly large proportions of in-year admissions as Fair Access was positive. However, emphasis on the principle that FAP is a safety net for children who would otherwise not have access, where children have not been allocated a place through the standard or usual in-year admissions process should make it clear that it was unnecessary to introduce this limiting category. It would be a positive change to remove it at the first opportunity.”

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

Type of school	Primary aged children	Secondary aged children
Community and voluntary controlled	2,894	1,544
Foundation, voluntary aided and academies	3,208	10,242
Total	6,102	11,786

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

Not at all	Not Well	Well	Very Well	Not Applicable
1	1	60	88	2

**Table 11:** The number of directions made between 1 August 2021 and 31 July 2022 to maintained schools for which the local authority is not the admission authority to admit children (including looked after by the local authority but resident in another area)

Total number of children	Of which, looked after	Of which, not looked after
17	2	15

83. For the past two years I did not ask local authorities to tell me about the number of children in respect of whom directions to admit were made to maintained schools. This question was re-instated this year. As table 11 above shows, the numbers were very small. The number of local authorities which used the power to direct was 12. By contrast the corresponding numbers for the period 1 April 2018 to 31 March 2019 were a total of 60 of whom 35 were looked after and 25 were not looked after and the number of local authorities which used the power to direct was 34. I was struck by the reduction and, having reviewed local authorities’ reports, asked several local authorities who had not made directions if they could offer further insight into the numbers and why they had not had to resort to directions. I am grateful to the local authorities concerned for providing further information. Their responses were characterised by descriptions of good relationships between the local authority and schools and between different schools. A number also mentioned the importance of sharing information with schools to ensure

openness and transparency. I was particularly struck by one response which referred to school leaders holding each other to account.

84. Against that very positive picture a small number of authorities said that they had encountered problems in dealing with other local authorities or with schools for which the local authority was not the admission authority. Nevertheless, one authority hinted at a broader issue involving the latter, saying:

“We get more and more push back from schools when they are full and have to discuss the possibility of direction, although the rules around direction are not always clear particularly now there is a predominance of Academies. This is a regional issue and is on the VS [Virtual School] Regional Heads action plan. The process is interpreted differently in each authority.”

## Other matters raised by local authorities

85. I am grateful to the local authorities who have responded to our open question about matters they wish to raise which have not been covered earlier. The responses have been thoughtful. A number of issues were raised and I summarise the main ones here.

86. First, we have asked previously for numbers of children educated at home but not in the last two years as we kept our requests shorter than usual in those years to reduce the demands on local authorities dealing with the Covid pandemic. One local authority asked that we reinstate this question. The DfE has confirmed to me that the Government remains committed to introducing statutory local authority registers for children not in school, as well as a duty for local authorities to provide support to home-educating families. This would capture information about numbers of home educated children.

87. Several local authorities commented on local experiences of catering for refugees from Afghanistan, Ukraine, Hong Kong and elsewhere. It was evident that many had faced challenges but were committed as were local schools to supporting these children and their families. Resources that had been provided for this were clearly welcomed, but there were also concerns that more was needed and about some of the processes in place. One said:

“The DfE Return for “School placements for children from outside of the UK” has been challenging to complete as information collected on the GCC In Year and CAF application forms only gather data relating to the admissions arrangements, Nationality and Country of Birth. This may not reflect the Country where the pupil is moving from e.g. Hong Kong, Ukraine, Afghanistan. If this return to gather information is to continue, it would be useful to have a standard phrase which is permitted on the application form for all authorities to use. This can then ensure that we comply with the Code and cannot be seen as being discriminatory within the application process. And Ukraine - Kent been required to allocate a significant number of displaced Ukrainian children, predominantly through In Year admissions processes, in addition to expected historic cohorts. While existing

frameworks accommodated this increased workload well, additional pressure was placed on a constrained workforce, which increased waiting times for all in year applications. A lack of high quality data from the Home Office impeded the Council's ability to pre-plan capacity needs, resulting in a more reactive approach being necessary. Department for Education guidance did not give sufficient consideration for Local Authorities that do not fully co-ordinate In Year admissions processes, which unreasonably increased public expectations in the Council's ability to allocate school spaces and the timescales work could be completed in, particularly during school holiday periods where little direct activity was possible. Afghan Refugees and Home Office placement decisions - KCC has also supported a large number of Afghan families who have been placed in Kent by the Home Office via the Afghan Citizen's Resettlement Scheme. This has combined with the additional place requirements from Ukrainian and other refugee groups to create acute placement issues in areas such as Ashford and Canterbury. KCC and the DfE have advised the Home Office of the resultant lack of school spaces, however, they continue to indicate an intention to place further families in these areas. This would unnecessarily exacerbate local pressures without a clear rationale as to why placements in alternative areas are not being considered. This lack of strategic thinking also creates unnecessary emergencies that then require rapid LA response. In an extreme case, LA Officers were contacted by HO Officials who asked to confirm availability of school spaces for families who were waiting on the runway in Kabul so that their take-off could be authorised. LA interaction at this level in Home Office operations are unprecedented and call into question wider decision making. Another talked about challenge of keeping family groups together when placing refugee children."

88. Two local authorities raised the question of the use of biological sex rather than gender in relation to admissions. One referred to transgender children in the context of single sex grammar schools while another said:

"...special consideration is required for the continuing pressure that builds regarding the use of biological sex, as opposed to gender, on application forms and the need for additional options other than Male and Female. A wholesale lack of definitive guidance from the DfE leave LAs and admissions authorities responsible for responding to complaints about perceived inaction, when Common Basic Dataset requirements means additional flexibility is simply impossible until government acts."

89. There were calls for guidance for LA and schools on the best way to respond to occasions where an admission authority does not meet the statutory deadline to determine and publish their admission arrangements; practical guidance on how in-year admission numbers operate, refusing based on prejudice and when 3.10 may apply.

90. As in previous years, there were many comments on the admission of summer born children. I include here two which are representative of many:

"We were disappointed that the government has reversed their decision to legislate on the admissions rights for parents of summer born children, including

the right that children who are out of cohort are entitled to remain in their chosen cohort until the end of their education. The government has advised that the process is working well, which is the case in ..... However the transition for out of cohort children to Year 7 is largely untested, given that it is now seven years since the government first introduced their commitment to legislate in this area.”

“Schools and parents find the guidance for summer born pupils to be confusing. The process for requesting summer born pupils to be admitted outside of their chronological year group is included within our coordinated scheme but these take up a significant amount of time dealing with each case. Where a parent has preferenced a number of own admission authority schools and each makes their own decision there are often inconsistencies. It would be helpful if the non-statutory guidance that has been released relating to summer born pupils was also reflected in the school admissions code.”

## Appendix 1 – The role of the OSA

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

92. 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.

93. Adjudicators are independent of the DfE and from each other unless two or more adjudicators are considering a case together. 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 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 where they 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.

94. Throughout the period covered by this report there were twelve adjudicators, including the Chief Adjudicator. Three new adjudicators were appointed in January 2023 following an open competition. Three adjudicators – Lorraine Chapman, Peter Goringe and Phil Whiffing - retire between March and April 2023. All have been exemplary adjudicators whose support, good sense and good humour I will miss. Adjudicators are supported by a small team of administrative staff who are seconded from the DfE for this purpose. At the beginning of 2022 we had five staff, three of whom worked part-time or combined work with study giving us an FTE of 4.4. Following the resignation from the DfE in September 2022 of one member of staff who is not currently to be replaced we have a headcount of four and corresponding FTE of 3.8.

95. The OSA's costs in the financial year April 2021 to March 2022 were £529,000 compared to £587,000 the previous year. We spent less on adjudicator fees as we had fewer cases (the 2020-2021 financial year having included the costs of the unprecedented numbers of variation cases resulting from the Covid-19 pandemic). The

costs of our staff also fell consequent on the changes and savings described above. I would expect these costs to be further reduced next year as the figures given cover the financial year 2021-2022 so do not take account of the reduction in costs following the resignation of a member of staff noted above.

96. We again held many of our meetings – both internal meetings and those with parties to cases – online. We did also resume visits to schools for some cases where the adjudicator thought this necessary. We will continue to seek to make the best use of technology and to opt for online or face to face meetings according to the circumstances of each case that requires a meeting. We were also glad to be able to meet face to face as an adjudicator cadre in May 2022 for the first time in over two years.

97. As in past years we sought and received legal advice and litigation support as necessary from lawyers of the Government Legal Department (GLD) and from barristers who specialise in education law. Adjudicator determinations are checked before publication by the Chief Adjudicator and, where appropriate, by GLD solicitors and/or by barristers. Determinations do not set precedents and each case is decided in the light of its specific features and context alongside the relevant legal provisions. Determinations are legally binding and, once published, they can be challenged only by judicial review in the Courts. In the period covered by this report, we responded to one pre-action protocol letter which asked us to consider again arrangements which had already been subject to determinations. The arrangements concerned were considered afresh by a different adjudicator taking account of new and additional points made. We also had one application for judicial review. At the time of completing this report we had not received judgment in the case.

98. At the completion of each case, the OSA seeks feedback from all involved on how the matter was handled. This year 440 forms were sent out and 43 (which is 9.7 per cent) returned. Most forms that were returned simply answered the questions asked by ticking the relevant boxes yes or no. These answers recorded in the great majority of cases that the respondents had understood the process, felt they had been kept informed and were satisfied with the process. Of those who provided comments, most were positive about the service provided and particularly the service provided by our secretariat. Some respondents raised concerns mainly about the time taken to complete cases. We continue to keep our processes under review and to make improvements where we can and to give as much indication as we can of how long cases may take while recognising that each case is different.

99. We received one formal complaint about the handling of a case. I considered this and apologised as oversights by both the adjudicator and secretariat meant that information had not been circulated as quickly as it should have been and this delayed completion of the case.

100. As in previous years, we asked LAs for comments on the template used to collect information for part 2 of this report. A number of LAs welcomed the change in the timing and period covered by the report so that they reported on a complete academic year so

that, as one expressed it: “The collection occurring in October rather than in the summer term results in a full set of data and more accurate picture of the success/concerns in the last admissions round”. Overall, local authorities appeared to consider that the survey struck the right balance in terms of numbers of questions and the level of detail sought.

101. We received 11 requests for information that cited the Freedom of Information (FOI) Act in the period 1 January 2022 – 31 December 2022. All FOI requests received were cleared within the timescales required. One request received was forwarded to DfE to respond to as the information requested was not within the remit of the OSA.

## Appendix 2 - OSA expenditure<sup>8</sup>

### OSA Expenditure financial years 2021-2022 and 2020-2021

Category of Expenditure	2021-2022 £000	2020-2021 £000
Adjudicators' fees	396	407
Adjudicators' expenses	3	2
Adjudicator training/meetings	0	0
Office staff salaries	114	163
Office staff expenses	0	0
Office Administration costs /consumables	0	0
Legal fees (including costs of subscription to legal database)	16	15
<b>Total</b>	<b>529</b>	<b>587</b>

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<sup>8</sup> Information relates to financial years 2021-2022 and 2020-2021. The report covers the calendar year 2022 so far as it relates to the work of the OSA.

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Office of  
the Schools  
Adjudicator

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