



Office of
the Schools
Adjudicator

Annual Report

September 2011 to August 2012

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Introduction

This is my first annual report as Chief Adjudicator covering the period 1 September 2011 to 31 August 2012. During this time Dr Ian Craig led the Office of the Schools Adjudicator (OSA) for the first two months. I am grateful for the work Ian did in smoothing the path during the handover period.

During the year I have been fortunate to draw on the skills of experienced adjudicators and office staff, and have worked with our new team members. Together the entire team, small though it is, has worked diligently to apply both old and new legislation to resolve the disputes referred to us with integrity, impartiality and in a timely manner.

As is usually the way of a new post holder, I have not followed exactly the format of previous reports. However, I have not changed it so much that it is impossible to compare the findings this year with those of recent years. I decided that it is time to stop comparing more recent cases with those of every year since 1999/2000 as successive changes in legislation and the remit of the OSA mean that there is very limited similarity between the case work of the past year and that of more than a decade ago.

I hope the Secretary of State and others will find the report useful.

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November 2012

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Executive summary

1. The Office of the Schools Adjudicator (OSA) has had another busy year, but with significant peaks and troughs in the number of cases being considered at any one time. There have been changes in the staff resulting in a year with two Chief Adjudicators, 14 adjudicators at one time or another, and eight administrative staff with everyone in the team except three of the administrative staff working part-time.
2. The Education Act 2011 and the associated new regulations and School Admissions Code (the Code) have brought changes to the work of the OSA. At times we have been dealing simultaneously with some cases under the old legislation and others under the new. Local authorities and schools have faced the same demands of checking carefully for compliance with the appropriate legislation.
3. Objections to **admission** arrangements for all types of schools are now within the OSA's remit and accounted for the largest part of our work, with more cases for more individual admission authorities than last year. Once again there were more referrals from parents than any other group. Unfortunately, in some cases there is a misunderstanding about achieving fairness in admission arrangements overall and what a parent regards as fair for their individual child.
4. We are concerned that despite the mandatory requirements of the Code and comments in previous annual reports admission authorities are not publishing their arrangements promptly once determined. Far too many own admission authorities do not comply fully with publishing complete admission arrangements. This deprives parents and others of the opportunity to see and, if necessary, object as permitted by the Code.
5. There have been fewer requests than last year for a **variation** to determined admission arrangements for maintained schools. We expect this to decline further as schools no longer need to seek a variation to increase their published admission number to provide additional places, mostly to cope with the continuing increase in demand for Reception Year places.
6. Appeals against a local authority's notice to **direct** a maintained school to admit a child have again formed a small part of our work. It is a matter of concern that cases continue to be found to be out of jurisdiction because the local authority has not complied fully with the requirements of the School Standards and Framework Act 1998.
7. Fewer **statutory proposals** have been referred to the OSA than last year. Cases predominantly involve either proposals to form a primary school from separate infant and junior schools or decisions that fall to the Adjudicator because the local authority has not made a decision in the prescribed two month period.

8. A small number of **land transfer** cases concerning maintained schools have been determined this year. No two cases seem to be alike and adjudicators embark on a new case wondering just what complexity they will have to unravel and then determine.
9. Local authorities in England continue to be required to produce a **local authority annual report** that must be sent to the Adjudicator by 30 June. They must also meet a new requirement to publish the report locally. For the first time, all 152 local authorities prepared and sent their report to the OSA, not all on time, but more quickly than in previous years. The scope of the report has been reduced and focuses primarily on assessing aspects of the admissions process that are intended to support the admission of children who may otherwise have difficulty in securing a place.
10. Admission authorities have responded promptly to amending their arrangements to give the highest priority in their oversubscription criteria to children who were previously looked after as well as looked after children. This positive response is greatly to be welcomed.
11. The application of fair access protocol procedures are mainly working well in placing children who do not have a school place in a school that best meets their needs. While some schools work especially well with their local authority in ensuring a place is available, there are other schools, a small minority, that are unco-operative and employ delaying tactics or resist even to the point where action has to be taken to direct the school to admit.
12. I have considered whether I can make any recommendations, based on the evidence available to me, this year about what further steps might be considered to support improvements in the system. At this time I have concluded that it is too early to draw any firm conclusions about the impact of the new Code on strengthening fair access overall. The Code is certainly a more concise document and there is no excuse for any admission authority not reading it and complying with its requirements. Some of our findings about the objections referred to the OSA clearly indicate that either the admission authority had not read the Code and had inadvertently failed to comply or had decided to avoid complying.
13. Rather, therefore, than offering recommendations for action by only the Department for Education (DfE), I highlight the action that based on the findings I have reported would improve further the fair access for all children to schools.
 - a. **All admission authorities** must comply with the requirements of the Code in respect of consultation about; determination of; and publication of their full admission arrangements. In particular, failure to publish as required denies parents the opportunity to object in a timely manner to arrangements that they deem limit fair access in their locality.

- b. **Schools with sixth forms** need to ensure they have admission arrangements for entry to the sixth form that meet the requirements of the Code. Students seeking a place should not be hindered in their search by hard to find, incomplete or unclear admission arrangements.
- c. **Local authorities** that are concerned about the number of late applications should use their contacts with the local press and other media to publicise the closing dates for applications. This would remind parents to apply in time for their preferences for a school place to be given full consideration.
- d. **Local authorities** need to ensure that they meet the statutory requirements for making a direction to a maintained school before issuing a notice of intention to direct the admission of a child. This is essential to ensure that the process is not delayed and a child does not remain out of school for any longer than absolutely necessary.
- e. **The Department for Education** should issue guidance for all local authorities and Academy schools to follow if it is considered necessary to seek a direction for an Academy school to admit a child to limit the time the child is not attending a school.

Background

14. The OSA was formed in 1999 as a consequence of the School Standards and Framework Act 1998 (the Act). It has a remit across the whole of England.
15. Adjudicators resolve differences over the interpretation and application of legislation and guidance on admissions and on statutory proposals concerning school organisation. The Schools Adjudicators have five main functions.

In relation to all state-funded schools adjudicators:

- rule on objections to and referrals about determined school admission arrangements;

and in relation to maintained schools adjudicators:

- decide on requests to vary determined admission arrangements;
- determine appeals from admission authorities against the intention of the local authority to direct the admission of a particular pupil;

- resolve disputes relating to school organisation proposals; and
 - resolve disputes on the transfer and disposal of non-playing field land and assets.
16. The Chief Schools Adjudicator can also be asked by the Secretary of State for Education to provide advice and undertake other relevant tasks as appropriate.
 17. At 31 August 2012 there were 12 Schools Adjudicators, including the Chief Adjudicator. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. Their role is to look afresh at all cases referred to them and 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. Although there is no legal requirement for adjudicators to hold meetings with the interested parties they may do so if they consider it would be helpful to them as they investigate a case.
 18. Adjudicators are independent of the DfE and from each other. They work alone in considering a referral unless the Chief Adjudicator assigns a particular case or cases to a panel of two or more adjudicators, in which circumstances the panel will consider the case(s) together. All adjudicators, including the Chief Adjudicator, are part-time, work from home and take adjudications on a 'call-off' basis. All may therefore undertake other work at times when they are not working for the OSA provided it is compatible with their role as an adjudicator.
 19. Adjudicators are supervised by the Administrative Justice and Tribunals Council and adhere to a Code of Conduct. They do not normally take cases in local authority areas where they have worked in a substantial capacity in the recent past, or where they currently live or where they have previously worked closely with individuals involved in a case or for any other reason if they consider that their objectivity might be, or perceived to be, compromised.
 20. The OSA is a tribunal, and all adjudicators work within tribunal legislation and procedure. Decisions, once published, cannot be challenged other than through the Courts.

21. Determinations are legally binding on local authorities and schools; therefore as appropriate they are checked before publication by the Chief Adjudicator and by lawyers for their legal accuracy. Adjudicators cannot be bound by similar, previous cases and determinations as they are required to take the specific features and context of each new case into account. Each case must be considered against the current legislation and for admissions matters the Code.

Review of the 2011 Report Recommendations

22. The 2011 Annual Report concluded with three recommendations for the DfE.

23. The recommendations and their progress to date are as follows:

Recommendation 1 - In order to improve consistency, requests to vary the determined admission arrangements of Academies should be referred to the Adjudicator, as they already are with other schools.

24. This recommendation has not been accepted. I remain concerned that although objections to the admission arrangements of all state- funded schools are referred to the Adjudicator, requests for a variation to determined arrangements are referred to the Adjudicator for maintained schools and to the Education Funding Agency (EFA) on behalf of the Secretary of State for Academy schools. My concern can be exemplified by considering the situation where more than one school in an area seeks a variation to its arrangements at about the same time. Unless the request is referred to the same body, and in the case of the OSA this would usually be the same adjudicator, a decision may be taken by an adjudicator for one school, for example, a foundation school, and for the other an Academy school, by the EFA. The end result for parents in seeking fair access to a school in that area could hinder not help them in being allocated a school place.

25. I am mindful that it would require a change in legislation for all variations to be determined by an adjudicator and of Ministers' intention not to make any further legislative changes concerning admissions during the life of this Parliament. I therefore simply raise the possibility of consideration being given to the EFA seeking advice from the OSA before making a decision about a request for a variation as happened previously in relation to objections to determined admission arrangements.

Recommendation 2 - In order to reduce issues related to cross-border applications, a national offer date for primary admissions should be identified for future years.

26. This recommendation has been accepted and offers of places at primary schools will be made on the same primary National Offer Day, the 16 April or the next working day, for admissions in 2014/15 and all subsequent years.

Recommendation 3 - As there are now set closing dates for both primary and secondary applications for school places, and late applications are a significant issue, particularly with regard to the most disadvantaged groups in society, there should be national publicity annually to alert parents to these dates.

27. This recommendation has not been accepted. Some local authorities have repeated their concern about the number of late applications, particularly for primary places, in their annual report to the Adjudicator. In the absence of national publicity it should nevertheless be possible for local authorities to stimulate local publicity through the local press and other media.

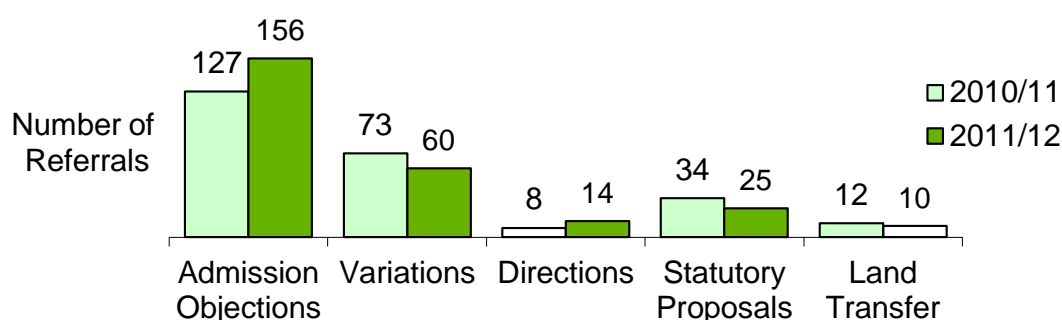
Review of the year 2011/12

28. Overall the OSA has had a busy year, but with significant peaks and troughs in the number of cases being considered at any one time. The Education Act 2011 brought changes to the OSA's remit and together with new regulations and a new Code on 1 February 2012 adjudicators have been required to assimilate the changes quickly and work in accordance with the relevant legislation for individual cases. Adjudicators assumed responsibility for objections to and referrals about admission arrangements of Academy schools. They continued to apply the 2010 Code to variations to admission arrangements for maintained schools for admissions in 2012 while beginning to apply the 2012 Code to requests for variations to arrangements for maintained schools for 2013 admissions. The OSA referred to the DfE objections to matters outside its remit and for Academy schools continued to redirect enquiries about variations to admission arrangements, directions to admit a child and disagreements about land transfer matters to the DfE or Young People's Learning Agency (YPLA) and latterly the EFA as necessary.

29. I have had regular meetings with Ministers and DfE officials to report on the work of the OSA and to try to ensure the OSA works efficiently and effectively with the Education, Choice and Access Division (ECAD), our sponsor division, while at the same time maintaining the OSA's independence that is an essential requirement for a tribunal. As Chief Adjudicator I have met, when appropriate, throughout the year with groups and organisations that share an interest in our work, and I have spoken on issues related to our work, primarily admissions, at a number of conferences.
30. The adjudicator team has changed significantly during the period covered by this report, and is likely to need further changes if it is to do its job in a timely manner for those who seek a resolution to a dispute through the OSA. I have been especially grateful to those adjudicators who stayed beyond the expected end date of their appointment to help with the induction of new adjudicators and with the case load over the summer months. Without their flexibility and ready assistance there would have been many cases unresolved before the beginning of the new school year. The team over the year has been:
- Alan Parker (to 31 January 2012)
Andrew Baxter
Canon Philip Metcalf (from 1 March to 28 June 2012)
Canon Richard Lindley
Carol Parsons
Cecilia Galloway (from 1 January 2012)
David Lennard Jones (from 1 November 2011)
Dr Bryan Slater
Dr Elizabeth Passmore OBE (to 31 October 2011 and Chief Adjudicator from 1 November 2011)
Dr Ian Craig (Chief Adjudicator to 31 October 2011)
Dr Melvyn Kershaw OBE (from 1 November 2011)
Dr Stephen Venner
Janet Mokades
Jill Pullen (from 1 November 2011)
John Simpson
31. The qualifications and backgrounds of all adjudicators can be found on our website at www.education.gov.uk/schoolsadjudicator. We clearly display these on our website as one of the ways in which we ensure transparency.

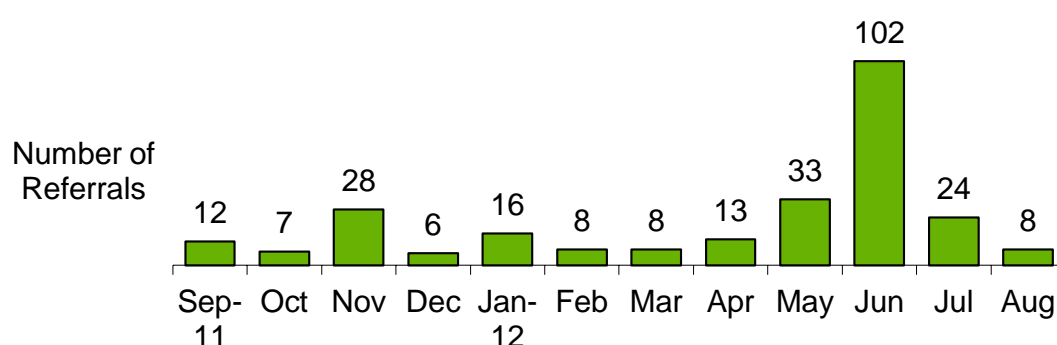
32. Adjudicators, including the Chief Adjudicator, are part-time and are only paid for the time actually spent on cases and related work. Fee rates have remained the same since 2007, and all adjudicators work hard to keep travel and other costs down. *Appendix 2* shows the OSA's costs.
33. Adjudicators could not do their job without the support of administrative colleagues based in the DfE's Darlington office. The 5.8 full-time equivalent staff provide the link between those referring matters to the OSA and adjudicators who make the determinations, as well as responding to numerous requests for information from the large number of people who contact the OSA. As the work of the OSA continues to evolve I am concerned that the demands over the summer months have not always been met as we would wish and a careful look is needed to find a way to have well-trained staff available when needed, but not be overstaffed during the quieter periods in the year.
34. The OSA does not employ full-time legal staff, but instead receives excellent 'call-off' support from members of the Treasury Solicitor's Department (TSols) who help to ensure that our determinations are legally sound. During the year we regretted that two colleagues we had come to value highly moved to other posts, but wished them well, and we welcomed the return to OSA work of two colleagues who had previously provided our legal advice. I am extremely grateful for the timely advice and support from all our TSol colleagues over the year.
35. Overall we dealt with 265 new cases this year compared with 254 last year. With over 20,000 state-funded schools spread across 152 local authorities in England only a very small proportion of these schools have been part of cases referred to the OSA. For those schools, the parents and others who make up the interested parties to the referral, it is not the number of referrals that matters, but that there is an independent, impartial decision made in a timely manner about their particular concern.

Table 1 - Referrals by type 2010/11 and 2011/12



36. Each year local authorities must submit a report to the Adjudicator by 30 June. As part of their report they gave the number of types of schools in their area which showed that the local authority was the admission authority for 10,990 community and 2,437 voluntary controlled schools. The relevant body, usually the governing body, is the own admission authority for 6,728 schools, comprised of 3,991 voluntary aided; 884 foundation and 1,853 Academies. The number of Academy schools will have increased, considerably on 1 September 2012. The total number of own admission authority schools increased from the approximately 6,000 reported last year as some community schools became Academies or foundation schools, independent schools became voluntary aided and free schools opened. However, many of the Academies were previously foundation or voluntary aided schools and as such were already their own admission authority.
37. The number of cases carried over into this reporting year from the previous one has reduced to 33 compared with 60 last year. The earlier date of 30 June by which objections to admission arrangements must be made to the OSA enabled investigations to begin before schools closed for the summer holiday and with much effort by the whole OSA team resulted in cases being completed before the beginning of the new school year. The spread of referrals received over the year shows how the work load varied in the last 12 months.

Table 2 - Spread of referrals month by month 2011/12



Admissions

Objections to and referrals about admission arrangements

38. During the year adjudicators have considered 142 objections to, and 12 referrals about admission arrangements. They also responded to two new requests from the YPLA to make a recommendation to the Secretary of State about the admission arrangements of Academies. The total number of new cases reporting concerns about admission

arrangements was therefore 156, which related to 105 individual admission authorities and is an increase on the 127 cases (63 individual admission authorities) last year. There were 47 cases carried forward from the previous year, 176 cases were finalised and 27 cases carried over into September. Of the determinations issued, in 43 the objections were fully upheld, 63 partially upheld and in 51 cases the objections were not upheld. Of the remaining 19 cases 18 were out of jurisdiction and one was withdrawn.

39. Once more the majority, just over half, of the referrals were from parents, but a smaller proportion than last year. The remainder came in almost equal proportions from schools; local authorities; members of the public; and others comprising; appeals panels, admission forums, Dioceses, a Parish Council and a teachers' union. Once again several of the referrals from parents were made as a result of their child not securing a place at the school they would most prefer. By the stage in the admissions process when places have been allocated it is too late for an adjudicator to accept an objection and have any influence on the arrangements for admissions in September 2012 even if the arrangements were found to breach the Code. However, having had the arrangements brought to the OSA's attention an adjudicator could then consider the 2013 arrangements. In some cases this resulted in a determination that required the admission authority to bring its arrangements into line with the Code.
40. We have considered why there may be late referrals about arrangements when parents and others have had the opportunity the year before to make objections to the arrangements if they believed they did not comply with the Code. One reason is likely to be the difficulty of finding determined admission arrangements on admission authorities' websites between 15 April when the arrangements for the following year must be determined and 30 June by which time any objections must be lodged.
41. Although we have not carried out a compliance exercise this year, in late April and early May case managers managed to make time to look at the websites of 50 admission authorities, both local authorities and schools that are their own admission authority, that had been involved in some way in cases last year, to see whether they complied with the Code's requirement at paragraph 1.47, "*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year*

(the academic year in which offers for places are made).” Of the 50 admission authorities only 14 showed the arrangements for 2013 and by mid-September this had risen to 37, still not the full 50 as should have been the case. This unacceptable situation has also been found in some of the cases referred to the Adjudicator this year. Some objections specifically referred to arrangements not being on the admission authority’s website. Even if not referred to in the objection, when adjudicators have looked at websites as part of their investigation about an objection they too have reported difficulty in finding arrangements and if there are arrangements shown they are often incomplete.

42. All admission authorities **must** determine their admission arrangements every year by 15 April and then they must display them in full on their website. By the time a local authority issues its composite prospectus by 12 September, parents have been deprived of the opportunity to look at admission arrangements and if they feel that they do not comply with the Code to make an objection that should result in non-compliant arrangements being made compliant before the arrangements are used to allocate places.
43. A further matter of concern is the continuing lack of compliance with the Code with respect to admission to sixth forms. This has been raised in previous annual reports, but still there are serious shortcomings in admission arrangements. The arrangements are often difficult or even impossible to find on schools’ websites; are incomplete; ask for details that are not permitted and so on. The Code is clear that schools which admit students to their sixth forms must have an admission number (that is the number of places that will be allocated to students new to the school); if they set academic conditions to be met these, **“must be the same for both external and internal places”**; and there must be oversubscription criteria. The school must not, for example, give priority according to the date the application was received nor require the applicant or applicant’s current school to provide information that is not permitted such as about behaviour, attendance record or ask for details of the applicant’s aspirations on leaving school. The Code at paragraph 2.6 goes on to say, **“As stated in paragraph 1.9m) above, any meetings held to discuss options and courses must not form part of the decision process on whether to offer a place.”**
44. There has been a continuing trend of objections relating to catchment areas, including objections to long established areas. Concerns have mostly arisen this year because of an increase in the number of

children within the catchment and not enough places for all those children who then have a lower priority in other catchment areas. Objections to catchment areas have also been linked with priority for siblings as described below. Some authorities are moving away from catchment areas to using distance, measured usually by a straight line, as a higher ranked oversubscription criterion, others are redefining the catchment area.

45. There have also been referrals concerning the priority, or lack of it, for siblings. Of particular concern has been the priority for siblings at primary schools. One such concern affects families where an older sibling did not gain a place at the catchment school and was given a place in a school in a different catchment area, not through preference, but because there was no place at the catchment area school. Then the younger sibling did not gain a place at the catchment school and neither did s/he have priority as a sibling at the older sibling's school. There have been various combinations of priority for siblings and local authorities have been working to increase the number of places available and to try to meet parents' preferences for siblings to attend the same school.
46. A further issue has emerged this year concerning siblings where primary schools have taken necessary action in recent years to provide extra Reception Year places and the admission arrangements for those schools give high priority in their oversubscription criteria to siblings. The overall effect in some schools is that the priority for siblings has reduced the number of places available for children living near the school who do not have an older sibling already attending the school. Solving the need to provide extra places for some children has created a problem for other children.
47. A few objections this year, as previously, have concerned priority for a Reception Year place for children who attend particular nursery provision. The objections were upheld. The preference of parents for nursery provision prior to applying for a place for a child for the year in which the child reaches compulsory school age cannot usually be taken into account in oversubscription criteria. This is because to do so may in practice make attending particular nursery provision a condition for gaining a Reception Year place. Or, it may mean that giving financial support to particular nursery provision raises the chance of gaining a place at the school contrary to paragraph 1.9e) of the Code. It cannot be fair that a parent's decision about nursery provision either almost guarantees a place at a particular state-funded school for some

children or prevents any possibility of gaining a place at that same school for others.

48. One of the amendments to the School Standards and Framework Act 1998 by the Education Act 2011 has opened up the range of people and bodies who can object to admission arrangements to be any person or any body. Sixteen referrals have been made by a national body and by members of the public that would not have been accepted under the last Code. Regulations require that the name and address of an objector are known to the adjudicator. This has meant that some objectors have requested that their name should not be made known to the admission authority or other parties. While this is perhaps understandable in the case of a parent objecting to the arrangements of a local school, we are concerned that anyone else should wish to remain anonymous without a strong reason.
49. For the first part of the year we continued to consider cases referred by the YPLA for a recommendation for them to consider on behalf of the Secretary of State. This enabled adjudicators to consider all objections to admission arrangements in the same way, but inevitably was a slower process than from 1 February 2012 onwards since when objections for all types of schools have come directly to the OSA with the determinations made by adjudicators and then published on the OSA website.
50. The Code at paragraph 3.2 says, "*Local authorities **must** refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful.*" Local authorities are no longer required to state in their report whether or not arrangements comply with the Code. Some local authorities have clearly taken the responsibility to refer non-compliant arrangements very seriously, but I remain concerned that not enough attention is given by others to checking arrangements in their area.
51. An issue, and a matter that needs to be put right for future years, is the difficulty some adjudicators have had in finding clear evidence that arrangements for 2013 were determined by the admission authority by 15 April 2012 and when they were last subject to consultation. Admission authorities need only consult on their arrangements every seven years if they make no changes other than those necessary to comply with the Code. They therefore need to keep evidence of when they did last consult and any responses to that consultation. They are

required to determine their arrangements every year by 15 April and must have evidence in the minutes of the meeting at which the formal decision was taken to determine the arrangements. Then once determined they cannot be changed other than as set out in the Code.

52. On a very positive note, the requirement in the new Code to give equal highest priority in oversubscription criteria to both looked after children and the new group of previously looked after children has been met in almost all the arrangements seen by adjudicators. This is a major success after the considerable time it took to ensure admission authorities gave highest priority to looked after children when that requirement was first introduced.

Variations to determined admission arrangements of maintained schools

53. During the period covered by this report adjudicators dealt with 60 new requests and four carried over from the previous year to vary admission arrangements; fewer than the 73 in 2010/11. Of these, 38 variations were approved, four approved with modification, three rejected, three remain pending, one was out of jurisdiction and 15 were withdrawn.
54. Once admission arrangements have been determined they can only be varied, changed, in limited specified circumstances. Any requests to vary arrangements for admissions in September 2012 have been considered against the 2010 Code with those for variations to arrangements for admission in September 2013 considered against the 2012 Code. Both Codes set out the specific circumstances in which an admission authority may itself vary its arrangements, for example, to comply with a mandatory requirement of the Code. Other matters must be referred to the Adjudicator.
55. If an admission authority considers there has been a major change in circumstances that necessitates a change in its admission arrangements then the proposed change will be assessed by an adjudicator. The admission authority must notify the appropriate bodies of the proposed variation. For an Academy school a request for a variation must be made to the EFA on behalf of the Secretary of State. My predecessor raised the anomaly of an adjudicator considering objections for all types of schools, but variations to determined arrangements for maintained schools being dealt with by an adjudicator and those for an Academy by the EFA. I share his concern and am of the view that there would be the merit of clarity and

impartiality in having all requests for variations considered by the same independent body.

56. Requests for a variation to determined admission arrangements fall into one of two categories (i) to change the published admission number (PAN), and (ii) to vary other aspects of the arrangements. Of the 60 variation referrals received this year 48 related to changes to PAN (43 to an increase and five to a decrease), and 12 to other aspects of the arrangements. The changes to PAN mostly relate to the need to increase the admission number for entry to a primary school as local authorities struggle to find additional places to accommodate the continuing, initially unexpected, but large, increase in Reception age children. For admissions in September 2013 onwards these types of variations will no longer need the approval of an adjudicator as the admission authority itself can increase its PAN.
57. The second group of variations includes adjustments to catchment areas, again as a result of increased demand for places and the unintended effect on some communities of the reduced likelihood of gaining a place when distance within the catchment from home to school is used to allocate places.
58. A continuing issue has been that although admission authorities do not have to consult on a proposed variation they do have to notify the relevant bodies. Sometimes it is difficult to find evidence that this requirement has been met. It is important that other bodies at least have the opportunity to comment if they wish. If the variation is approved, the admission authority must fulfil the further requirement of ensuring that all interested parties can see the varied arrangements.
59. The OSA anticipates a significant reduction in the number of referrals requesting a variation in 2012/13 as a consequence of the change in requirements for increasing a PAN and the increase in own admission authorities that are Academy schools which will apply to the EFA for a variation.

Directions to maintained schools to admit children

60. Under Sections 96 and 97 of the School Standards and Framework Act 1998 in certain circumstances the admission authority for a maintained school may appeal to the Schools Adjudicator if they are notified by a local authority of its intention to direct the school to admit a pupil and the admission authority does not wish to do so. If a local authority

considers that an Academy school would be the appropriate school for a child without a school place and the Academy school does not wish to admit the child, the local authority may make a request to the Secretary of State that he directs the Academy school to admit the child.

61. During the period covered by this report the OSA received 14 new referrals and one referral was carried over from last year. All cases were resolved during the year.
62. Of the 15 cases, in five of them the adjudicator did not uphold the appeal and gave the local authority permission to direct the admission of the child. The appeal against direction was upheld in three cases. Of the remaining seven cases the adjudicator concluded that for five s/he did not have jurisdiction to make a determination as either the local authority had not fulfilled the conditions in the legislation before issuing a notice of intention to direct, or the appeal to the OSA by the admission authority was made too late and therefore the direction could be made. Two appeals were withdrawn.
63. Paragraphs 3.16 to 3.21 of the Code set out the procedures to be followed and provide references to the relevant parts of the School Standards and Framework Act 1998. Difficulties arise when the local authority moves from being unable to place a child through the fair access protocol route to issuing a notice of intention to direct without meeting the terms of section 96(1) of the Act that, *"... either (or both) of the following conditions is satisfied in relation to each school which is a reasonable distance from his home and provides suitable education, that is – (a) he has been refused admission to the school, or (b) he is permanently excluded from the school."* Such cases are very unfortunate as they lead to children being out of school for much longer than would otherwise be necessary if the conditions had been met. Admission authorities sometimes do not understand that the time allowed for making an appeal, 15 days or seven days in the case of a looked after child, are consecutive days and do not take into account weekends and holidays.
64. Given the hearteningly low number of appeals to the adjudicator I tried to establish how often a direction takes place without recourse by the admission authority to the adjudicator. As part of the information requested in the annual reports from local authorities each authority was asked how many children had been placed in a school as the result of a direction.

65. From the 152 local authorities, and for all types of schools, 16 children of primary school age and 69 of secondary school age were admitted to a school as the result of the school being directed to admit the child. A direction is the process of last resort for obtaining a school place for a child and I believe it is a positive finding that so few children without a place have to be found a place through this process. The earlier steps of in-year admissions or if necessary the fair access protocol provisions have worked to good effect to provide places for children without a school place.

Statutory proposals

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

66. During 2011/12 the number of statutory proposals referred to the OSA fell to 25 compared with the 34 referrals in 2010/11. This reduction was anticipated as the Adjudicator does not have jurisdiction in matters concerning Academy schools. Of the two cases carried forward and the 25 new cases, 21 proposals were approved; two decisions remain outstanding; two were withdrawn and two were out of the adjudicator's jurisdiction.
67. We continue to have a trickle of discontinuance of community infant and junior schools and the establishment of community primary schools, more commonly called amalgamations, where the Adjudicator is the decision maker. We also receive cases where the local authority as decision maker has not made a decision within the statutory two months so the case defaults to the Adjudicator. Sometimes an adjudicator wonders just why a decision has not been taken. In future years we expect that statutory proposal referrals will continue to decline.

Land transfers for maintained schools

68. Land transfer disputes became part of the remit of the Schools Adjudicator through the Education and Inspections Act 2006. Six cases were carried forward from 2010/2011 and 10 new referrals were received. Nine decisions were issued, six cases withdrawn and one case is yet to be resolved. Land transfer cases remain a small, but often very time-consuming, complex activity for adjudicators. No two cases ever seem to be the same.

69. Some cases may be withdrawn because the parties come to an agreement once an adjudicator is involved, others fall because on careful investigation it is found that the adjudicator does not have jurisdiction to consider the matter. A particularly interesting case this year involved the unresolved transfer of land between a local authority and a foundation school which had in the meantime converted to an Academy. With the agreement of all parties a way forward was found whereby the adjudicator retrospectively determined the community to foundation transfer which then carried through to the Academy.

Other issues

70. Over the years concern has sometimes been expressed about the perceived 'lack of consistency' in determinations. Parties to a case may refer to previous determinations and query the decision about the current case which may appear to be very similar, but the determinations differ. Adjudicators must take into account all the evidence available to them and the circumstances of the individual school. They must then make their determination in accordance with the current legislation and Code. With training and discussion about completed cases the team try to ensure that we all have the same understanding and that any apparent lack of consistency from year to year is accounted for by differences in circumstances or changes in legal framework and not by unsatisfactory decision making.
71. We invite feedback from parties when a case has been completed. Almost inevitably the adjudicator's decision will be liked by one party and not by the other since for almost all of the OSA's work an adjudicator only becomes involved when there is a dispute. Where a party is dissatisfied with the way we have handled a case we try to learn from what has been the cause of the discontent to ensure that it is not the handling of the case that causes the dissatisfaction or the validity of the decision. Over the year we have received four complaints about our handling of cases (one last year). It is particularly encouraging when the feedback from especially difficult cases and from the party who does not receive the decision they hoped for compliments the OSA for the handling of the case and the impartiality and integrity with which the decision was made.
72. As last year we have had no judicial review proceedings issued against the OSA. The whole team endeavours to work carefully, thoroughly and within our remit. Where errors have been made they have been acknowledged and we have tried to put matters right very quickly. We

are strongly of the view that a judicial review, even if the decision is in favour of the Adjudicator, is not in anyone's interest as it takes a high cost in terms of time, public expenditure and reputation. We aim with TSols' assistance to continue to be able publish determinations that are legally sound and whether liked or not are accepted by all the parties to a case.

Local Authority Reports 2012

73. Section 88P of the School Standards and Framework Act 1998 requires all local authorities in England to, "*... make such reports to the adjudicator about such matters connected with relevant school admissions as may be required by the code for school admissions.*" Paragraph 3.23 of the Code sets out that, "*Local authorities **must** produce an annual report on admissions for all the schools in their area for which they co-ordinate admissions, to be published locally and sent to the Adjudicator by **30 June** following the admissions round.*" The Code also sets out in the same paragraph what must be included as a minimum and these matters are summarised below.
74. In addition to the prescribed information set out in the Code, I used the opportunity to enquire about a matter on which I have to report to the Secretary of State concerning the impact in local areas of having more admission authorities and any implications for parental choice.
75. This year 120 local authorities met the requirement to submit their report by 30 June compared with only 88 in 2011. With continued prompting by OSA officials 144 had been received by 31 July and the final report was received on 16 August. This is a significant improvement on last year and I hope that there will be even more timely compliance next year.
76. A new requirement has been introduced for local authorities to publish their report locally. In the course of looking at their websites while searching for admission arrangements that have been referred to the OSA I have seen a number of reports published by those local authorities thus meeting the new requirement of publishing their reports. I invited local authorities to say where and how a copy of their report could be obtained by a member of the public. All said they would publish their report; 150 said they had already or would be publishing their reports on their website; two were only making a hard copy available; and 53 said they will make a hard copy available in addition to publishing on their website. Although I am unable to confirm

the level of compliance overall, local authorities appear to have responded positively to this new requirement thus providing additional information for residents in their area.

77. This summary of the reports is just that, a summary of what local authorities say about admissions in their areas. Sometimes what they say resonates strongly with findings from objections referred to the Adjudicator about admission arrangements. There are other matters about which the OSA has no direct evidence. However, it is not part of the OSA's remit to seek evidence at first hand to corroborate what local authorities report.

Specific Groups

78. As previously, all local authorities were asked to comment on the extent to which admission arrangements for schools in their areas served the interests of: **looked after children; children with disabilities; and children with special educational needs. In addition a new group, previously looked after children, has been added.**

Looked after children

79. Local authorities report that, as required by the Code, looked after children are given the highest priority in the oversubscription criteria for admission to schools in their area. Additional comments provided by some local authorities indicate that when a looked after child needs a school place outside the normal admissions round schools are usually co-operative and will admit the child even when the year group is full. A small number of authorities also say that they try to find a place for such a child within a very short timescale to avoid the child being out of school for any longer than necessary.
80. As reported in previous years, a small number of local authorities refer to difficulties in placing and monitoring children who have been accommodated in their authority having been placed there by other local authorities. Difficulties include not having sufficient information about the child to decide which school would be the most appropriate for that child and having to seek additional information which results in delays and a child being out of school for longer than acceptable.
81. A minority of local authorities point out that while all the own admission authority schools give priority to looked after children, some schools designated as having a religious character give priority, as permitted by

the Code, to looked after and all children of that faith before other looked after children. One local authority is of the view that this stance, although lawful, has the effect of excluding looked after children not of the faith from attending high performing schools.

Previously looked after children

82. The 2012 Code at paragraph 1.7 requires that if a school is oversubscribed, *“the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a residence order or special guardianship order).”* The new provision concerning previously looked after children takes effect from admissions in September 2013.
83. Although I acknowledged to local authorities that this new requirement does not come into effect until admissions in September 2013, I invited them to include any evidence they may have already about the admission of such children. Many local authorities made no comment on this matter; others reported that all the admission arrangements in their area have been amended to comply with the Code. A few local authorities cited instances where the new provision has already influenced actions in their area. Some of these authorities reported that previously looked after children had been given priority under an exceptional medical or social oversubscription criterion; one authority said it already prioritises such children and another authority said two previously looked after children used the appeals process for a place and were successful in gaining admission.
84. The positive reports about arrangements being amended and the early response by some admission authorities suggests that this provision will be applied correctly across all admission authorities during the next admissions round.

Children with disabilities

85. Local authorities report that the admission to schools of children with disabilities and provision for this group are usually managed well for the children and take their needs into account. About half of all local authorities state that their admission arrangements and those of many own admission authority schools in their area give high priority to children with disabilities in the oversubscription criteria by placing

exceptional medical or social needs at oversubscription criterion two or three.

86. Actions taken by local authorities for ensuring suitable places for children include priority at certain schools where the premises have been modified to give full accessibility; close working between admission teams, parents and social care teams to ensure needs are known and understood; and targeting resources at particular schools to make suitable provision. Outside the normal admission round, a few authorities highlighted the use of the fair access protocol procedure to find the best place for a child with disabilities.

Children who have special educational needs

87. About half the local authorities referred to the separate legislation that covers the admission to a school of a child who has a statement of special educational need which names that school. Mostly, there are no problems in ensuring admission authorities comply with the legal requirement to admit a child. There are, however, several references to pressure on schools where they are already at full capacity.
88. Concerns that have been raised include an increase in the number of pupils diagnosed on the autistic disorder spectrum; children being admitted to Reception classes without sufficient information about their needs from the nursery provision the children attended; and the number of children from other local authorities that need a place.
89. Authorities also report an increase in the number of children who have a level of special need, but do not have a statement. These children may be admitted to a school through a social/medical need oversubscription criterion, but not all schools are fully co-operative. Although overall local authorities report a positive picture about the admission of children with special needs to a suitable school, there are occasional references to some schools actively discouraging parents. Other local authorities report specific positive action between the authority and all local schools to ensure all children with special needs are admitted to a school as quickly as possible.

Fair Access Protocols

90. Again this year the vast majority of local authorities (141) confirmed that they had a Fair Access Protocol (the protocol) agreed with the majority of their schools. Two authorities do not have a protocol, but this is because they each have only one school. Others were in the

process of revising their protocol taking into account the new Code and expected to have it in place for the new school year. A few do not have a protocol with primary schools, but have processes they follow to place children in schools and are working towards having a formal protocol.

91. Almost all local authorities have agreed their protocol with all their schools. The data show the protocol has not been agreed with 535 out of 16,994 primary schools and 15 out of 3,161 secondary schools. The primary schools are mostly those in authorities where there is no formal protocol rather than a refusal to agree. All schools, whether they have agreed the protocol or not are bound by the protocol that applies in their authority.
92. Local authorities were asked to assess how well the protocol has worked during the year in placing children without a school place in a school in a timely manner and to give the number of children placed using the protocol.
93. Data from the reports show the total number of children admitted to a school using the protocol and the number refused a place.

	Number of children		
	<u>Primary</u>	<u>Secondary</u>	<u>Total</u>
Admitted via the protocol	5,271	8,758	14,029
Refused admission	623	750	1,373
Admitted via a direction	16	69	85

94. From these figures alone it was difficult to assess the effectiveness of using the protocol as I had no indication of the total number of children who need a school place outside the normal admissions round. A small number of reports noted the number of such children and to try to obtain a little data to give context to the extent of the use of a protocol I am grateful to the OSA office team and the local authorities they contacted for providing data for nine authorities. The small sample of rural, urban, unitary, metropolitan and London Boroughs provided data for primary and secondary age pupils. The authorities reported finding places for over 38,000 pupils with approximately two thirds of the places for primary age pupils and one third for secondary age pupils. Taking the average of these numbers and extrapolating to all 152 local authorities suggests that well over 500,000 pupils may have needed a

place through the in-year admission arrangements co-ordinated by local authorities. Of these less than 3 per cent had to be found a place through the protocol and less than 0.02 per cent through a direction to admit.

95. The data suggest the protocols are working well and this is borne out in the comments from local authorities. The majority of comments refer to the protocol working well and some include notes about features that are said to contribute towards the efficient and effective working of the protocol. One authority says schools admit children with challenging educational needs on a rota system, depending on clearly recognised availability of places. Another refers to the particular demands on schools of admitting pupils to Years 10 and 11 and the excellent co-operation between headteachers who have agreed a new protocol specifically for Years 10 and 11 to avoid unnecessary delays for pupils during GCSE courses. Another authority has developed an alternative strategy for pupils moving into its area in Year 11 and has established a course for Key Stage 4 pupils who have moved into the area and have little English. A few authorities referred to keeping records that particularly help with checking that all pupils are admitted to a school as quickly as possible.
96. Not everything works smoothly. There are comments about examples of ways in which some schools are unco-operative which results in delays and a child being out of school for longer than s/he needs to be. Delaying tactics include simply not responding to communications from the local authority or making what may be excessive requests for additional information before refusing to admit the child. Some authorities have suggested that there should be a set time, say five days, within which a school must respond and this should be included in regulations.
97. Several local authorities refer to a small minority of schools that in their view unreasonably refuse to admit a child. In one authority where 13 of the 14 secondary schools are their own admission authority, these own admission authority schools have refused since November 2011 to co-operate with the protocol. This has resulted in the authority having to seek directions to admit. Another authority with 15 out of 17 secondary schools their own admission authority has had to seek the help of the EFA and its predecessor to ensure pupils are admitted to schools. Fortunately these examples of unco-operative, obstructive behaviour are in a tiny minority, but for the children concerned they represent a very serious situation in which they cannot obtain a school place for

much longer than is in any way reasonable. Such schools would do well to follow the example of the schools that have agreed to be especially helpful so that everyone works together to keep to a minimum the time for which a child is without a school place. Some local authorities note that mentioning it will be necessary to move to seeking a direction to admit the child is all that is needed to improve that school's co-operation, but it is a pity that such a threat is necessary.

98. Some local authorities have said they would like clarification about the process to be followed for making a direction if a school refuses to admit a pupil in accordance with the protocol and the school in question is an Academy school.
99. Overall as part of the arrangements for in-year admissions to schools the protocols are working well.

Effectiveness of Co-ordination

100. Local authorities were asked to assess the effectiveness of co-ordination of primary and secondary admissions for September 2012. The vast majority reported that in their view the co-ordination of the admissions process for admissions to both primary and secondary schools had worked well.
101. Several local authorities commented on improvements in the co-ordination of admission to primary schools and a few made reference to the introduction of a national offer day for primary admissions as being a welcome development that should help to remove some of the less satisfactory aspects of co-ordination that still occurred this year. One aspect that was noted as contributing to the improvement is that a small number of local authorities report they have increased the number of preferences that can be made.
102. Where there have been difficulties concerning primary schools they include: some own admission authorities not meeting deadlines for ranking applications and returning information to the local authority; not ranking correctly in accordance with the oversubscription criteria; a problem with the IT system; a very rare instance of a school contacting parents about offering a place prior to the local offer day; and delays in exchange of information between authorities. Several authorities have reported that some own admission authority schools, particularly those who have become the admission authority for the first time, have

needed assistance to complete their role in the co-ordination process. A very small number of authorities referred to having surplus capacity for children starting school, but a significant number from across the country reported the opposite and described action being taken to increase greatly the number of places available.

103. A concern for some local authorities is that although the initial allocation of places goes smoothly, varying practice in making further offers as places become available can become difficult as some authorities continue to work closely with neighbouring authorities while others do not continue to exchange information. Although not specifically asked to comment, a significant number of authorities report that every child wanting a place had been allocated one.
104. An issue noted by some authorities is the number of late applications, particularly for primary places, and a restated wish from previous years to have some national publicity about closing dates for applications.
105. A small number of local authorities report having to spend time assisting secondary schools that are their own admission authority to fulfil the requirements in connection with admissions. One local authority noted that all the secondary schools in its area are their own admission authority and they think they can act unilaterally. Another said some schools had offered places directly. All state-funded schools are required to have lawful admissions arrangements and participate in the co-ordination process for allocating places. Schools need to read the Code carefully to ensure that any actions they might be considering would comply with the requirements of the Code and will be for the benefit of parents and their children.
106. Several authorities commented on the change that will take place in 2013/14 when there will be no requirement for them to co-ordinate in-year admissions and schools will be able to admit children in year who apply directly to the school. A few authorities say that there is local agreement by all the schools that the local authority should continue to co-ordinate in-year admissions. Other local authorities expressed concerns about tracking children who have particular needs.
107. Although it is no longer a requirement for local authorities to report on compliance of the admission arrangements of schools in their area, paragraph 3.2 of the Code says, "*Local authorities **must** refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other*

admission authorities are unlawful". As part of the co-ordination process it may be useful next year to know how many local authorities do look at admission arrangements for compliance with the Code so that they can feel confident that parents looking for a place for their child do have fair access to schools in their area.

Admission Appeals

108. The requirement for information about appeals has been reduced and a new aspect this year of collecting the information required by the Code has been the opportunity for local authorities to update the information concerning appeals by 31 August. In the past they have often said that the data at 30 June tell just a small part of the story. We have received updated data from 77 authorities. This year I asked authorities to meet the minimum requirement of the Code in providing data and did not solicit additional comment. If appeals were an issue for any authority it had the opportunity to add comment in the issues section.

109. The data collected are shown below:

	Original number of parental appeals		Number of parental appeals at 31 August	
	<u>Lodged</u>	<u>Upheld</u>	<u>Lodged</u>	<u>Upheld</u>
Primary	21,623	1,145	22,970	1,892
Secondary	13,863	2,623	15,152	2,922
Total	35,486	3,768	38,122	4,814

110. A very few local authorities included comments about appeals. One suggested that it would be useful to include data on the number of appeals heard as not all the appeals that are lodged reach the stage where they are heard. This will be considered for next year. Another expressed concern about the continuing distress of parents with children starting school for the first time who put a lot of effort into their appeal which fails on infant class size grounds. A small number of authorities are concerned that it may be difficult to deal with all the appeals for a primary place in a timely manner after the national offer day is introduced.

Other issues - from local authorities

111. The Code makes provision for local authorities to comment on any issues in their area that they wish to raise. Three matters have been referred to more than any others: the need for more primary school places; concern about the change to the in-year admissions process when the local authority is no longer required to co-ordinate these admissions; and how to ensure parents apply on time for a school place.
112. The majority of local authorities that included specific issues cited the continuing difficulty in providing additional places in primary schools. The need for additional places is not restricted, as sometimes portrayed, to Greater London. Although some of the greatest demand for extra places has been in certain London Boroughs, local authorities from all areas of the country have reported the need for additional places. In some instances relatively few places, but in others a great many. Some refer to providing extra classes in previous years and again this year providing five or nine extra classes or even up to 20 classes giving 600 extra places.
113. Where local authorities have been faced with increases every year for several years they are now beginning to be anxious about providing places when these large cohorts reach secondary school age. They have been able as the admission authority to provide many of the extra places at community primary schools, but they are concerned that where many of the secondary schools are their own admission authority it may prove difficult to provide additional places if those schools do not wish to expand.
114. The second most frequently cited issue is concern about what may happen when local authorities no longer have responsibility for in-year admissions. They say they cannot be confident that they will be able to ensure that children without a school place, especially children with particular needs, will be monitored and proper provision made for them when parents go direct to a school that is its own admission authority and ask for a place. If the parent is simply told the school is full, local authorities are not confident that the school will point out that the parent has the right of appeal. There is a degree of anxiety that those schools that are reluctant to accept children now will be even less willing to admit certain children once they receive applications direct for in-year admission. How the arrangements work across all authorities will be something to be assessed in future years.

115. The third issue is that a small number of local authorities continues to be very concerned about the number of parents who do not apply for a school place, mainly a primary school place, on time. They feel that with the introduction of the national offer date for primary places national publicity prior to the closing date for applications would help to prevent the difficulties that arise when parents have not applied on time and then find their local schools are full. Although arranging national publicity is one of last year's recommendations that was not accepted, there is no reason why local authorities themselves could not try to generate local publicity as the closing dates approach.
116. Several other issues were mentioned by one or a few local authorities. Two of these issues concern school place planning and compliance of admission arrangements with the Code.
117. There is some concern that when more places are needed own admission authority schools may refuse to increase their capacity or schools may increase their PAN, which cannot be objected to, such that decisions taken by individual schools may make school place planning more difficult. A further concern for secondary schools was highlighted where new 14-19 provision at a University Technical College (UTC) or Studio School is planned. The issue is that the secondary school planning for a cohort as it moves through the school from Year 7 to the end of Key Stage 4 will need to take into account that an unknown number of pupils may move to the UTC or Studio School. The implications for the Key Stage 4 curriculum at the secondary school may be minimal or could adversely affect the options available to the pupils remaining at the school.
118. A few local authorities reported that they had found examples of poor practice by some own admission authority schools. While some of these schools responded positively and worked with the local authority to make their admission arrangements comply with the Code, others did not co-operate. Although it is understandable that a local authority may not wish to object to the admission arrangements of one of the schools in its area, if in the view of the local authority the arrangements do not comply with the Code then, as some authorities have done this year, they should lodge a formal objection with the OSA.

Other issues - the impact of local areas having more own admission authority schools and any implications for parental choice.

119. In response to the Secretary of State's remit letter to me I have drawn on findings from the work of the OSA itself, discussions with others in the education system and comments in the local authority reports. I decided the most efficient way to gather information from across the widest area to be able to respond to the request for an, *"assessment of the impact in local areas of having more admission authorities and any implications for parental choice"* would be to ask local authorities as part of their report to comment on any impact they had found as a result of having many or most own admission authorities in their area.
120. During the period covered by this report 13 local authorities said they had carried out at least some investigation into the impact of having more, possibly many or most, schools in their area that are their own admission authority. Of the 139 that said they had not yet made any assessment, some of these local authorities said they would be doing so in future.
121. As reported above, many schools that have converted to become Academy schools were already their own admission authority as foundation or voluntary aided schools. In terms of schools of all types and in particular schools that have become Academies, many local authorities suggested, and I concur, it is likely that we will see schools looking at the new Code and considering determining different arrangements by 15 April 2013 for admissions in September 2014. Schools that change their status after their admission arrangements have been determined must continue with those arrangements for that admissions round. Some schools decided to change their arrangements for 2013 admissions, other than to comply with the mandatory requirements of the Code, but their local authority reminded them of the need to consult before doing so. A small number of objections to the OSA included matters that had been changed after the arrangements had been determined and were matters about which there should have been a consultation and therefore were not lawfully made changes so the previous, properly determined arrangements remain in place.
122. A few local authorities recorded that some schools had been slow to comply with new mandatory requirements of the Code, in particular in relation to paragraph 1.32c which requires, *"Admission authorities*

*must take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school – while making clear that this does not equate to a guarantee of a selective place.*” While some schools with the assistance of the local authority made suitable modifications to their procedures, others had refused to do so.

123. The most frequent reference to matters that would be monitored for impact on parents concerned in-year applications. Where some local authorities are already concerned about some own admission authority schools being reluctant to admit in certain circumstances, monitoring will be undertaken to try to ensure this does not become a bigger problem.
124. In response to the question, *“If the admission arrangements of individual schools are all considered to be lawful, is there any difficulty for parents in securing a place at a local school?”* just over half the local authorities said yes. The reasons overwhelmingly related to the increase in demand for primary school places and were not linked over the last year to any increase in the number of own admission authority schools.

Concluding comments

125. The OSA has had another busy year with periods of low and high levels of cases. The number of referrals does not of itself provide an accurate indication of how busy we have been as it is the level of complexity of a case that has the greatest influence on the number of hours worked. The need to deal with old and new legislation and Codes at the same time has proved something of a challenge for adjudicators and case managers alike and the many enquiries to the office indicate that others have not always assimilated and acted on the changes that resulted from the Education Act 2011.
126. Where we have sufficient evidence we have tried to identify areas of good practice and matters that need to be improved. We have been concerned at times as to whether a local authority has followed fully the requirements for dealing with statutory proposals. At other times the carefully presented papers indicate a thorough process has been followed and all the requirements for consultation and the provision of supporting material are exactly as they should be.

127. From the local authority reports it is encouraging that of the very large number of children seeking a place in year the vast majority are found a place without recourse to using the fair access protocol, and if the protocol is used it is usually effective in securing a place with only a tiny minority of children being placed through the direction provision.
128. We remain concerned that year after year we see some of the same breaches of the Code, such as the consultation process not meeting the requirements of the Code; arrangements not determined on time; full arrangements not published on the admission authority's website; prohibited information requested on supplementary information forms; and incomplete arrangements for admission to sixth forms. Schools that are their own admission authority have a responsibility to provide all the necessary information on their websites: it is not an optional extra.
129. Following the publication of the last annual report Dr Ian Craig left the post of Chief Schools Adjudicator and I stepped into the role having previously worked as an adjudicator. I am grateful to Ian for ensuring that his report was completed during his time in office and for handing on the OSA team in good spirits. Our team has changed over the year and I have found the experience gained during my time as an adjudicator to be invaluable as we have all pulled together to complete the year's work. I am grateful for the effort that everyone has put in to ensuring that we all do our best to meet the OSA's remit and do so impartially, with integrity and as efficiently as possible.

Recommendations

130. Since the last annual report in November 2011 the Education Act 2011 and the associated new regulations and Code have brought changes to the work of adjudicators. The Secretary of State's remit letter asks that the annual report should give, *"the strategic view of fair access in the round, and explain what, if any, further steps would support improvements to the system in line with wider Government reforms..."*.
131. I have considered whether I can make any recommendations, based on the evidence available to me, this year about what further steps might be considered. At this time I have concluded that it is too early to draw any firm conclusions about the impact of the new Code on strengthening fair access overall. The Code is certainly a more concise document and there is no excuse for any admission authority not reading it and complying with its requirements. Some of our findings

about the objections referred to the OSA clearly indicate that either the admission authority had not read the Code and had inadvertently failed to comply while others had decided to avoid complying.

132. Rather, therefore, than offering recommendations for action only by the DfE, I highlight the action that based on the findings I have reported would improve further the fair access for all children to schools.
- a. **All admission authorities** must comply with the requirements of the Code in respect of consultation about; determination of; and publication of their full admission arrangements. In particular, failure to publish as required denies parents the opportunity to object in a timely manner to arrangements that they deem limit fair access to a school in their locality.
 - b. **Schools with sixth forms** need to ensure they have admission arrangements for entry to the sixth form that meet the requirements of the Code. Students seeking a place should not be hindered in their search by hard to find, incomplete or unclear admission arrangements.
 - c. **Local authorities** that are concerned about the number of late applications should use their contacts with the local press and other media to publicise the closing dates for applications. This would remind parents to apply in time for their preferences for a school place to be given full consideration.
 - d. **Local authorities** need to ensure that they meet the statutory requirements for making a direction to a maintained school before issuing a notice of intention to direct the admission of a child. This is essential to ensure that the process is not delayed and a child does not remain out of school for any longer than absolutely necessary.
 - e. **The Department for Education** should issue guidance for all local authorities and Academy schools to follow if it is considered necessary to seek a direction for an Academy school to admit a child to limit the time the child is not attending a school.

Appendix 1 - Case details 2011/12 and 2010/11

Objections to admission arrangements	2011/12	2010/11
Total cases dealt with	203*	486**
Decisions issued: upheld	43	69
Decisions issues: part upheld	63	235
Decisions issued: not upheld	51	92
Decisions outstanding	27	47
Out of Jurisdiction	18	42
Withdrawn	1	1

* 156 new referrals and 47 decisions outstanding from 2010/11

** 127 new referrals and 359 decisions outstanding from 2009/10

Variations to admission arrangements	2011/12	2010/11
Total cases dealt with	64*	85**
Decisions issued: approved	38	66
Decisions issues: part approved/modified	4	1
Decisions issued: rejected	3	8
Decisions outstanding	3	4
Out of Jurisdiction	1	2
Withdrawn	15	4

* 60 new referrals and 4 decisions outstanding from 2010/11

** 73 new referrals and 12 decisions outstanding from 2009/10

Directions of pupils to a school	2011/12	2010/11
Total cases dealt with	15*	11**
Decisions issued: upheld	3	5
Decisions issued: not upheld	5	0
Decisions outstanding	0	1
Out of Jurisdiction	5	3
Withdrawn	2	2

* 14 new referrals and 1 decision outstanding from 2010/11

** 8 new referrals and 3 decisions outstanding from 2009/10

Statutory Proposals	2011/12	2010/11
Total cases dealt with	27*	43**
Decisions issued: approved	21	31
Decisions issued part approved/modified	0	1
Decisions issued: rejected	0	5
Decisions outstanding	2	2
Withdrawn	2	4
Out of Jurisdiction	2	0

** 25 new referrals and 2 decisions outstanding from 2010/11*

*** 34 new referrals and 9 decisions outstanding from 2009/10*

Land Transfer	2011/12	2010/11
Total cases dealt with	16*	12**
Decisions issued	9	4
Decisions outstanding	1	6
Out of Jurisdiction	0	0
Withdrawn	6	2

** 10 new referrals and 6 decisions outstanding from 2010/11*

*** 12 new referrals and 0 decisions outstanding from 2009/10*

Appendix 2 - OSA Expenditure 2011-12 and 2010-11 ¹

Category of Expenditure	2011-12 £000	2010-11 £000
Adjudicators' fees	309	304
Adjudicators' expenses	19	21
Adjudicator training/meetings	1	5
Office Staff salaries	143	179
Office Staff expenses	3	3
Legal fees	22	97
Publicity ²	22	38
Consultancy fees	0	0
Administration/consumables	1	8
Total	520	655

Notes:

1. This financial information relates to the two last full financial years 2010-11 and 2011-12. This overlaps with the period of this report but does not totally coincide with it.
2. 'Publicity' relates to publication of results of adjudications as required by regulations which were applicable up to 31 March 2012.



Office of
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