Office of
the Schools
Adjudicator

Office of the Schools Adjudicator Annual Report

September 2018 to August 2019

January 2020

Contents

Introduction and executive summary

1. This report covers the period 1 September 2018 to 31 August 2019.

2. I hope that the findings drawn from adjudicator casework and from reports made to me by local authorities in accordance with section 88P of the School Standards and Framework Act 1998 will be of use to the Secretary of State, his Ministers and their officials, local authorities, faith bodies, academy trusts and school governing boards. As in previous years, I have tried to keep the report relatively short in recognition of the demands on the time of those for whom the report is relevant.

3. When considering reports from local authorities and reflecting on adjudicator casework, it is apparent to me that for many of the challenges or problems identified by a school, multi-academy trust or local authority, there will be accounts elsewhere of schools, trusts or local authorities that have successfully addressed those same challenges or problems. In the course of adjudicator case work we see much good practice as well as some failures to comply with requirements. I have sought to reflect good practice from local authority reports and adjudicator casework in this report.

4. Since most adjudicator work and local authority reports focus on admissions, that is the emphasis of this report. As in past years, the overall impression from casework and local authority reports is of an admissions system that as a whole works effectively in the normal admissions rounds and that in those rounds the needs of vulnerable children and those with particular educational or social needs are generally well met. There remain concerns about how well some vulnerable children fare when they need a place at other times.

5. The number of schools where some priority is given to children entitled to one or more of the premiums has continued to grow and according to the figures provided for me now stands at 730 compared to 67 for admissions in 2016 which is the first year for which I have the relevant figures. Following a letter sent by the Minister of State for School Standards to admission authorities in December 2017 encouraging them to consider giving a high priority to children previously in care outside England, we asked local authorities about the number of schools giving such priority. Reports from local authorities suggest that the arrangements for over 6,000 schools include such priority and more details are given in part 2 of this report.

6. This year adjudicators dealt with cases from across our remit. Overall, the number of new cases rose this year from 198 in 2017/18 to 257. The increase was driven by higher numbers of objections to and referrals of admission arrangements and much higher numbers of requests for variations to determined admission arrangements. The number of other types of case remained relatively stable and accounted for just over six per cent of the cases referred to us. I am grateful to the schools, academy trusts, parents, local authorities and others who took the time to give feedback on how the Office of the Schools Adjudicator (OSA) handled the cases in which they were involved.

7. Along with carrying out our casework, adjudicators have over the year spoken at events in order to explain our work and answer questions from schools and others. I have continued to attend meetings of the Department for Education (DfE) convened Admissions Group which is invariably constructive in its discussions and enables representatives from across the system to discuss matters of common interest. I have also had useful meetings with DfE officials and the Minister for School Standards.

8. **Objections to and referrals of admission arrangements** have continued to form the largest part of our work. A total of 140 objections were made to admission arrangements compared to 129 in the previous year. Of the cases completed in the year[1], 25 objections were upheld; 38 partially upheld; and 41 not upheld[2].

9. The number of requests for **variations** to the determined admission arrangements of maintained schools rose again from 52 to 101. This represents an acceleration of the trend of the past few years. Adjudicators completed 113 variation cases in the reporting year. Of these, 64 were approved, 2 were part approved or modified, 11 were rejected, 26 were out of jurisdiction and 10 were withdrawn.

10. The number of referrals of a local authority's notice of intention to **direct a maintained school to admit a pupil** combined with the number of cases where the Education and Skills Funding Agency (ESFA) **requested advice on the admission of a child to an academy** was ten. This was two fewer than last year; all were completed during the reporting year. Three **statutory proposals** were referred to us: the same number as last year and the number of **land transfer** cases referred was also three.

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[1] Some completed cases had been carried forward from the previous reporting year and some new cases were subsequently carried forward to the next reporting year.

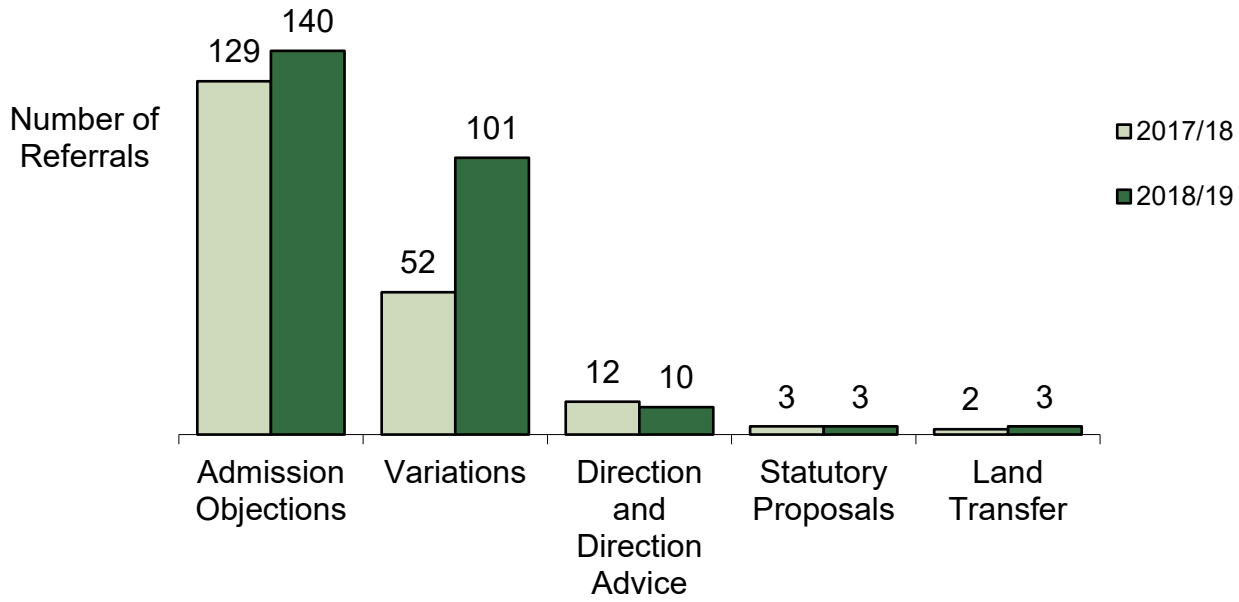
[2] Nine were out of jurisdiction and three were withdrawn.

Part 1 - Review of OSA work in the year 2018/19

11. The overall number of cases referred to the OSA in 2018/19 was 257 compared with 198 in 2017/18 and 163 in 2016/17. It is the highest number since 2014/15 when we had 268 referrals. The increase we have seen this year reflected higher numbers of objections to and referrals of admission arrangements (which rose from 129 to 140) and a much higher number of requests for variations to determined arrangements (which rose from 52 to 101).

12. We began the year carrying forward 37 admissions cases and 21 other cases. The number of new cases – primarily objections to admission arrangements and requests for variations - began to rise from February. In March 36 objections and 21 variation requests were received before numbers peaked in May with 68 objections received in the two weeks of May running up to the deadline of 15 May. This year 61 objections to and referrals of admission arrangements had to be carried forward into the 2019/20 reporting year along with seven proposed variations to admission arrangements and three other cases. In this context, I note that while there is a deadline for objections to admissions arrangements which means that this element of our work is seasonal and peaks in the summer, other types of case can be and are referred at any point of the year. Thus, it is almost inevitable that some cases will be carried forward from one reporting year to the next.

Figure 1: Referrals by type 2017/18 and 2018/9



Admissions

Objections to and referrals of admission arrangements

Table 1: Admissions cases by year and outcome

	2018/19	2017/18
Number of cases considered	177	163
Number of new cases	140	129
Cases brought forward from previous year	37	34
Number of individual admission authorities within new cases	92	78
Cases finalised	116	126
Number of objections/referrals:		
fully upheld[3]	25	37
partially upheld	38	31
not upheld	41	48
Cases withdrawn	3	1
Cases out of jurisdiction	9	9
Cases carried forward into following year	61	37

13. The 140 new cases received this year related to 92 individual admission authorities. This includes some instances of a relatively large number of objections to changes made to the arrangements of a small number of schools. As in past years, new cases related to all categories of schools with 15 concerning the admission arrangements for community and voluntary controlled schools in 11 local authorities, 16 for 12 individual voluntary aided schools, eight for seven foundation schools and 96 for 61 academy schools, including free schools. As last year, non-compliant arrangements were found for every category of schools, including schools where the admission authority is a local authority, a board of governors or a multi-academy trust. Parents and members of the public between them remained the single largest group of objectors, accounting for almost three quarters of all objections. Local authorities were the objector in some 15 per

[3] This includes referrals under section 88I of the School Standards and Framework Act in which the arrangements were found not to conform with requirements

cent of cases and other objectors included other schools, a Member of Parliament and campaigners. Table 1 above gives the outcome for each case considered. Of those 104 cases where a conclusion was reached (that is the 116 finalised cases minus those 12 withdrawn or out of jurisdiction), 18 were found to have no fault in their arrangements (meaning that the objection was not uphold and no other breaches of the requirements were found).

14. In my report last year, I emphasised the need for those responsible for websites of admission authorities (whether schools, local authorities or multi-academy trusts) to ensure that the information was consistent and that websites did not contain inconsistent or contradictory versions of arrangements. I was particularly concerned that not all local authorities published clear and easily accessible accounts of the admission arrangements for community and voluntary controlled schools once these had been determined. Too often the arrangements for these schools could only be found in a part of the authority's website concerned with reports to the local authority's lead member or Cabinet until they were published as part of the composite prospectus in September. As I said last year, by then it was far too late for parents or others to make an objection. This year we asked local authorities to provide a link to the website where their determined arrangements were published, and I comment on the range of practices this revealed in part 2 of this report.

15. As in previous years, we received objections about consultation and in some cases found that the **consultation** required by paragraphs 1.42 to 1.45 of the Code in certain circumstances had not been properly carried out. Details of good practice on consultation based on adjudicators' experience in their casework and local authority reports can be found in my annual report from 2016/17 at: https://www.gov.uk/government/publications/osa-annual-report. This year, a number of objections were made to consultations undertaken before arrangements were determined that differed from those which applied in earlier years. Some of those objections seemed, to us at least, to be seeking to secure the reversion to the previously existing arrangements and/or to our requiring the consultation to be re-run.

16. I think it is worth pointing out that while we can and do consider objections about alleged failures to meet requirements relating to consultation, we cannot require admission authorities which have not consulted properly to re-consult or to revert to previous admission arrangements on the grounds that they have not consulted properly. So far as consulting again is concerned, the law and the Code are clear about when consultation must take place (for at least six weeks between 1 October and 31 January in the determination year). By the time arrangements are determined and an objection made and considered it is too late to re-consult for the same year. As to reverting to previous arrangements, admission arrangements are determined for one year only. Where an adjudicator finds that a set of arrangements do not conform with the Code the admission authority cannot be required to adopt the previously existing arrangements. It is for the admission authority to decide what set of Code-compliant arrangements to adopt in order to address the non-compliance identified by the adjudicator.

17. As in previous years, objections were made to a range of matters. These included objections to the use of **feeder schools, catchment areas, faith based arrangements, the testing arrangements for grammar schools** and to whether or not arrangements as a whole were **fair and clear** and whether oversubscription criteria were **reasonable**. My predecessors and I have written about all of these issues in the past and I will not repeat the same points here as previous reports remain available. There were, however, some new issues raised this year.

18. We have in the past dealt with objections about whether **catchment areas** were reasonable and clearly defined (as required by the Code). This year, we received objections about the catchment areas which are created when admission authorities give priority to those for whom the school is the nearest school. The effect of working out all the addresses for which a given school is the nearest is the creation of an area around the school. The boundaries of this area will depend on the location of other schools. If residence within the area affords priority for a place at the school within it then that area meets the Code's definition of a catchment area as it is quite clearly *"[a] geographical area, from which children may be afforded priority for admission to a particular school*[4]."

19. The Code's requirements as to catchment areas are clear and apply to catchment areas however they are created: they must be "*reasonable and clearly defined*[5]." Adjudicators have found cases where admission arrangements based on "nearest school" either did not make clear how parents could establish which schools were included for the purpose of defining nearest schools or did not make it at all easy for parents to work out which the nearest school to their address actually was. In one case, the online tool to allow a parent to ascertain their nearest school was not "live" until after August which is much too late for parents to consider the arrangements and decide if they want to make an objection. It is also worth pointing out that an area generated on the "nearest school" basis cannot take account of the number of children living in that area and whether the school concerned will be able to accommodate them all should they apply there. Nor does it take account of boundaries such as rivers or major roads or of transport routes to the schools.

20. We have received objections about the way some admission authorities decide which parent's address is to be used as the **child's address** for the purpose of school admissions where the parents do not live together. In these cases, the approach being used was to use the address of the parent who received child benefit as the child's address, with no provision for the address of the other parent to be used. Adjudicators found this approach unacceptable and non-compliant with the Code and I thought it would be helpful to say something in this report about their reasons. In the first place, in some families, child benefit is not received. Secondly, there is no requirement that child benefit be paid to the parent with whom the child lives during the school week, term or

[4] Code Glossary page 39

[5] Paragraph 1.14 of the Code

year or with whom the child lives for most of the time. It is perfectly possible for child benefit to be paid to a parent with whom the child lives only during the school holidays or weekends. The use of the address of the parent who receives child benefit as the sole permitted indicator of a child's address where parents live apart is not suitable for school admissions. It is not a reliable indicator of where a child actually lives for most of the time Monday to Friday during school terms which is a key factor in considering the most appropriate address for the purposes of school admissions. Its use with no scope for other indicators to be used to establish the address of a child of parents who do not live together is likely to be found to be unreasonable and unfair and not in conformity with the Code.

21. We have received complaints about admissions to the **sixth forms of non-selective schools**. I have become increasingly aware that there is a lack of understanding of what the law does and does not permit and require. Against this background, I thought it would be helpful to outline some key aspects here. Schools which admit to their sixth form at Year 12 must have a published admission number (PAN) for this purpose which must relate only to those joining the school for the first time; the PAN does not include those transferring from Year 11 at the school. Admission authorities for schools which are not selective are, nonetheless, permitted to set academic entry requirements for the sixth form and these must be the same for internal and external candidates. This is covered in paragraph 2.6 of the Code. Admission authorities must set an academic "threshold" and must give highest priority to all looked after and previously looked after applicants who reach that threshold[6]. Beyond that, should there be more young people who meet the threshold than there are places, the Code requires clear, fair and objective oversubscription criteria to decide who should be offered the places. As part of these criteria the admission authority is free to adopt a "sliding scale" to rank applicants so giving a higher priority to those with better GCSE results. I should also make clear that decisions about what courses young people are then able to follow having been offered a place is a matter for the senior management of the school and is not an admissions matter for the adjudicator at all.

22. This year 58 of the total of 140 objections were to the arrangements of 36 different **grammar schools**. Some of these objections were to arrangements that had sought to increase access to grammar schools for disadvantaged pupils (for example by the introduction of catchment areas with priority for pupils entitled to the pupil premium who lived in that area to replace rank score ordering). Some objectors did not believe that priority should be given to children entitled to the pupil premium, even though the Code is clear that this is permitted. Other objections were made to the arrangements for other grammar schools on the basis that they did not do enough to allow access to disadvantaged pupils. I have written in the past about my concern that we continue to receive (and must deal with) objections motivated by a desire to change the law relating to admissions or the Code and not by any well founded belief that a particular set of

[6] Subject only to the specific provisions relating to schools with a religious character

arrangements does not conform with the law as it stands. I think it is right that I say now that in the past few years it has particularly been grammar schools that attract such objections. I recognise that many people hold strong views about grammar schools and we receive objections from those who support selective education and from those who oppose it. However, the role of the adjudicator is to test arrangements against the law and the Code as they stand.

23. We continued to receive objections to **reductions in PANs**. There were eight such objections in total of which four (compared to six last year) concerned secondary schools. Five of these objections were made by local authorities expressing concern that the places that would be removed were needed to allow the local authority to discharge its duty to secure the provision of school places. Where the proposed PAN was lower than the number of pupils who had been admitted in recent years, a further argument made was that the reduction would act to restrict the scope for parents to have their preferences met. In determining these objections, adjudicators took account of whether there was evidence that the places to be removed were likely to be needed or wanted in the coming years. Adjudicators also had it in mind that if an objection to the reduced PAN were not upheld, there would be no scope for the local authority or any other body to object should the same PAN be set in future years. This is because, while objections can be made to a reduced PAN, no objection can be made where an admission authority sets a PAN which is the same or higher than the PAN set the previous year[7]. One objection to a reduction in PAN was from the governing board of a community primary school which objected to the local authority's determination of a reduced PAN for the school. Where a school can accommodate the number of children indicated by a particular PAN and there is demand from parents for those places, it would require a very strong argument to persuade an adjudicator to allow a PAN reduction to which the school objected.

[7] The only exception to this is that the governing board for a community or voluntary controlled school can object if the PAN set by its local authority as the admission authority is lower than the governing board would wish.

Variations to determined admission arrangements of maintained schools

Table 2: Variations to admission arrangements

	2018/19	2017/18
Number of cases considered	120	58
Number of new cases	101	52
Cases brought forward from previous year	19	6
Decisions issued: approved	64	34
Decisions issued: part approved/modified	2	0
Decisions issued: not approved	11	2
Cases withdrawn	10	2
Cases out of jurisdiction	26	1
Cases carried forward into following year	7	19

24. 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 ESFA. Some variations, for example to comply with a mandatory requirement of the Code, do not require approval by either the adjudicator or the ESFA as the case may be.

25. As the table shows, the number of proposed variations has risen significantly from last year having in turn risen from 41 the year before. Looking slightly further back to 2014/15 and 2013/14, the numbers of new requests for variations were typically under 20 each year. Overall, the main reason for seeking a variation remains (as it was last year and the year before) a wish to reduce the PAN in primary schools where the demand for places has fallen. Admission authorities most commonly set out their concern that a school with say, a PAN of 90, will admit just over 60 children and have to employ three rather than two reception teachers in order to comply with the infant class size regulations and that the impact on the school's finances will be serious. Such requests for variations were approved where the data suggested that places would not be needed to allow the local authority for the area in which the school was located to meet its statutory duty to provide school places and where parents would not be deprived of a preferred school place.

26. I recognise that it can be challenging to assess accurately the demand expected for places at a school in, say, September 2021 at the time PAN is set early in, say, February 2020. However, reductions in PAN when carried out at the normal time for determination of arrangements require consultation and thus give parents and others in the local community an opportunity to comment and, indeed, to object if a reduced PAN is determined. When a PAN is reduced by means of a variation there is no consultation and no scope for objections. A variation should be a last resort and, as the Code has it at paragraph 3.6, *"necessary in view of a major change in circumstances".*

27. I am troubled, in this context, that in six cases we have been asked to approve variations to PANs for the same school year on year. This suggests, at the very least, that it should have been possible to plan ahead and consult on a reduced PAN. Adjudicators will generally not approve variations where there is evidence that there is demand for the places that would be removed (other than in circumstances such as damage to buildings where the places cannot be used).

28. The other main reasons for seeking variations related to changes to be made consequent on the approval of statutory proposals. Where the statutory proposals have not been approved before admission arrangements have been determined it is clearly right that the admission authority for other schools affected should be able to seek variations once approval has been granted for the statutory proposals.

29. Some of these proposed variations concerned changes to catchment areas of schools following the closure of another local school. It is quite appropriate in areas in which catchments are used to ensure that all addresses fall within at least one catchment. In one case, however, little or no regard appeared to have been paid to making a rational split taking account of capacity at the schools to which parts of the former school's catchment were to be added. Instead, the catchment of the former school had been rather arbitrarily added to those of other schools on the basis of a simple dividing line. The adjudicator in this case approved the variation but with a modification so that the new catchment areas better reflected capacity at the schools concerned.

30. In too many cases proposals for a variation to admission arrangements were out of the adjudicator's jurisdiction or consideration of proposals was delayed because the admission authority had not followed fully the process set out in paragraph 3.6 of the Code. This requires admission authorities to notify the "*appropriate bodies*" that they are applying for a variation. Appropriate bodies are defined in footnote 61 to that paragraph as "*In addition to the bodies listed at paragraph 1.44 (c), (d) and (f) and so far as not covered by them, all governing bodies for community and voluntary controlled schools in the relevant area*." The relevant area is defined in the School Standards and Framework Act 1998 (the Act) as the area of the local authority unless the local authority has determined another area through the Education (Relevant Areas for Consultation on Admission Arrangements) Regulation 1999. Local authorities are required to review their relevant areas every two years. Adjudicators have found a number of local authorities and governing boards to be unaware of this requirement. As a result, admission authorities were found only to have notified neighbouring schools, or schools within some

other locally defined area and not all those in the “relevant area” whether this was the local authority area or some other properly determined relevant area.

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

31. Under Sections 96 97, 97A and 97B of the Act, the admission authority for a maintained school may, in certain circumstances, refer to the adjudicator notification by a local authority of its intention to direct the school to admit a child if the admission authority believes it has a valid reason not to admit the child. If a local authority considers that an academy would be the appropriate school for a child without a school place and the academy does not wish to admit the child, the local authority may make a request to the ESFA to direct, on behalf of the Secretary of State, the academy to admit the child. In such cases, the ESFA may (again on behalf of the Secretary of State) seek advice from the adjudicator.

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

	2018/19	2017/18
Total number of cases considered	10	12
Number of new cases	10	12
Cases brought forward from previous year	0	0
Cases finalised	10	12
Maintained schools – decision to: • Admit the child • Not admit the child • Direct to another school	 2 0 0	 2 0 0
Advice to Secretary of State to: • Admit the child • Not to admit the child	 0 3	 0 3
Cases withdrawn	3	4
Cases out of jurisdiction	2	3
Cases carried forward into following year	0	0

32. These cases are given the highest priority by OSA staff and adjudicators as they involve children and young people who may be missing education. In relation to maintained schools, and as I and my predecessors have said before, we continue to receive referrals where the procedure laid down in the Act has not been followed. Information about the number of directions made by local authorities and on requests for the Secretary of State to direct academies to admit children is included in Part 2 of this report.

33. It is possible for a local authority looking after a child to direct an admission authority for a maintained school in another local authority area to admit that child. Such "cross border directions" are specifically provided for in relation to looked after children in sections 97A and 97B of the Act and paragraph 3.19 to 3.21 of the Code. The provisions apply only to looked after children. One such case referred to the adjudicator this year involved a direction made in relation to a normal year of entry. Directions for looked after children in normal years of entry are rarely necessary given the levels of priority for school places enjoyed by all looked after children. However, schools with a religious character are entitled to give a higher priority to children of their own faith who are not looked after than to looked after children who are not of the faith. This is addressed in paragraph 1.37 of the Code reflecting regulation 9 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012. The school in this case was a school with a religious character that had more applicants of its own faith than it had places. It gave priority to children of the faith and as the looked after child was not of the school's faith, the child could not be offered a place under the school's oversubscription criteria. The local authority looking after the child sought a direction and this was referred by the school to the adjudicator. The school argued in part that it was not possible for a direction to be made in the normal year of entry. The adjudicator ruled that the direction could be made and the school was directed to admit the child. I repeat that such cases are likely to be rare but I thought it worth making clear in this report that directions can be made in the normal year of entry and that in relation to a looked after child the only ground for the adjudicator to decide that the child should not be admitted is if such admission would seriously prejudice the effective use of resources or provision of education. This is a high threshold.

Discontinuance and establishment of and prescribed alterations to maintained schools

34. The number of statutory proposals referred to the OSA remained very low. We completed four cases in the reporting year (one of which had been referred to us at the end of the previous reporting year and thus carried forward and three of which were referred in the current reporting year). Two of the proposals were to close foundation schools and were referred by the governing bodies of the schools which opposed the closures. In both of these cases, the adjudicator rejected the closure proposals because, for reasons specific to each school, the adjudicator did not consider that the case for closure had been made. The remaining proposals were to replace infant and junior schools with primary schools. One was approved and the other withdrawn.

Land matters for maintained schools

35. We began the year with only one land case under consideration. I draw attention to this as the case had first been referred to us in February 2016 and simply could not be completed because the adjudicator was unable to secure the necessary information from the local authority and school concerned. I am glad to be able to report that this case was finally able to be completed in March 2019. Less encouragingly, we have had to carry forward into the next reporting round two further cases referred to us in June 2019. In both of these (which relate to the same local authority) inaction by the local authority meant that registration of land transferred by operation of law was not completed when it should have been. This has created challenges for managing land matters when further changes to the schools' categories are proposed.

Part 2 - Summary of local authority reports 2019

36. This section summarises the reports that the 152[8] local authorities in England responsible for education in 2018/19 were required to submit to the OSA. Each local authority must also publish its full report locally.

37. This year we did not repeat some questions asked in past years where we judged that we were unlikely to receive much information to add to the existing body of knowledge. Local authorities were, of course, free to comment on any matter they wished to raise where this was not covered in my questions and many did so. The views expressed by local authorities in previous years also remain a matter of public record[9].

38. We asked new questions about:

a. the proportion of schools for which local authorities were not the admission authority but in respect of which local authorities ranked preferences expressed for the schools;
b. the use of oversubscription criteria which give priority to children previously in state care outside England; and
c. how well the admission system served children being educated in the area of the local authority submitting the report but being looked after by another local authority.

39. Local authorities vary significantly in size and character so it is not surprising that not all questions were relevant to every local authority and not every local authority answered every question. The tables below will not, therefore, always show responses from 152 local authorities. In addition, I know that local authorities cannot always provide information that is entirely accurate or comprehensive. As might be expected, local authorities commented particularly on matters where they faced challenges and problems. In some cases, an adjudicator telephoned the local authority to explore further some of the comments made in reports and these discussions have also informed this report. As in past years, the most often repeated concerns related to difficulties in securing places for children who needed them in year, particularly for more vulnerable children, and the risk that in consequence children might miss education.

[8] There are now 151 local authority areas responsible for education with the creation of the local authority area of Bournemouth, Christchurch and Poole on 1 April 2019. All data in this report relates to the period prior to that change.

[9] Past reports can be found at https://www.gov.uk/government/publications/osa-annual-report

Admission arrangements in the normal admissions rounds

Determination and publication of arrangements

40. All admission authorities are required to determine their arrangements annually and **must** then publish them. I would expect all local authorities who are admission authorities to meet these requirements. I was told by 139 local authorities that they had determined their own admission arrangements for 2020 by 28 February 2019 as required by the Code. Three local authorities have no community or voluntary controlled schools so have no arrangements to determine. This means that ten local authorities did not determine their own arrangements by the legal deadline. Furthermore, when it comes to publication as distinct from determination, only 128 local authorities reported that they published their own arrangements by 15 March, which is the date by which they are required to publish details of where the admission arrangements for all publicly funded schools in their area can be seen.

41. This year I had asked the 149 local authorities with arrangements to determine to send me the link to their 2020 arrangements and these were viewed by an adjudicator. Most of the arrangements were, as one would expect, clearly written and accessible. The best in terms of presentation were written with parents in mind and were easy to find, read and understand. Unfortunately, approaching 40 sets of arrangements failed, in the adjudicator's opinion, at least one of these tests. Some were marked "draft" or "proposed" long after the date when they were required to be finalised; some were located within long committee papers or buried deep within a co-ordinated admissions scheme. Some did not include all the information required by the Code and many were not clear. In short, some may have been determined and published but were hardly fit for purpose. Some local authorities appear to rely on the composite prospectus as the place to provide clear information on their arrangements. This is almost inevitably unlawful. The composite prospectus does not have to be published until 12 September and I cannot believe that any local authority would be able to publish a composite prospectus by the deadline for publishing admission arrangements of 15 March. I hope those local authorities who read this and recognise that their own practice is not as good as it might be will review what they provide and so improve for future years.

42. More positively, many local authorities provide advice and guidance to other admission authorities in their areas before those other admission authorities determine their own arrangements. One local authority said it *"…works hard to advise schools on their responsibilities with regard to consultation and determination of admission arrangements. We issue termly updates to schools and issue regular email reminders. Where issues come to light the local authority works with schools to ensure arrangements are compliant and in the majority of such cases schools have agreed to make changes."* Such an approach is likely to mean that any concerns the local authority has or any questions the admission authority wishes to raise can be dealt with before arrangements are determined. This in turns avoids the situation of a local authority's having to challenge arrangements that it believes do not comply with the Code.

43. Last year, only 19 local authorities were able to report that all other admission authorities in the area had provided their admission arrangements to the local authority by the deadline for doing so of 15 March. The number this year had risen to 25. This is clearly a welcome improvement. That said, failures to consult, determine, publish and provide to the local authority copies of arrangements by 15 March, as required by the Code, were matters that local authorities continue to say they most commonly raised with the other admission authorities in their area. I was also told of several instances where schools joined a multi academy trust and adopted the arrangements in use in that trust without the consultation required before arrangements can be changed in such circumstances.

Pupil, service and early years premiums (the premiums) in oversubscription criteria

44. Local authorities have provided information on the use of the premiums in admission arrangements for schools each year since 2015 (in relation to admission arrangements for 2016), permission to use the premiums in oversubscription criteria having been introduced in the 2014 Code. Table 4 shows the trend in the use of at least one of the premiums in admission arrangements since 2015. I note that the number of secondary schools is similar for 2019 and 2020 but that this includes some instances of admission authorities adding the use of one of the premiums to their oversubscription criteria and some removing it.

Table 4: The reported number of schools with at least one of the pupil premiums in admission arrangements for the years from 2016 to 2020

Number of schools using at least one of the premiums	2016	2017	2018	2019	2020
Primary	25	111	184	352	526
Secondary	42	65	145	200	204

45. Local authorities reported that the arrangements for 730 schools for 2020 include at least one of the premiums compared to 552 for 2019. The decision of two local authorities to use the premiums in the arrangements for 2020 for the total of 147 primary schools for which they are the admission authorities is a significant factor in this increase. One of them explained that the introduction of this priority was part of its education strategy which "*focuses on vulnerable groups of children, right from pre-birth to higher education, and how we can ensure that they are able to achieve their full potential."* Of the secondary schools using one or more of the premiums,125 were grammar schools. They all used the pupil premium and 23 used the service premium in addition. Overall, the service premium remains the premium most commonly used in admission arrangements as it is used by the admission authorities for 484 schools. It is important to

treat these figures and those in tables 4 and 5 with caution. They are all based on local authority reports. Given the number of different admission authorities concerned and the scope for admission arrangements to be changed, it is not realistic to expect local authority figures to be absolutely accurate.

46. The number of children who stand to benefit from the use of the premiums in oversubscription criteria will vary depending on the size of the schools and the level of priority given. For some schools the highest priority after looked after and previously looked after children is given to children entitled to one or more of the premiums; at others the priority afforded is so low that it is likely to make little difference as to who is or is not admitted if the school is oversubscribed.

Table 5: The reported use of pupil premiums in admission arrangements for 2020 (2019 figures in parenthesis)

Type of premium	Early Years	Pupil	Service	Number of schools using at least one of the premiums
Primary	265 (100)	290 (101)	402 (275)	526 (352)
Secondary*	2 (2)	173 (159)	82 (74)	204 (200)
Total	267 (102)	463 (260)	484 (349)	730 (552)

* including all through schools

Co-ordination of admissions at normal points of entry

47. As with last year, co-ordination of admission arrangements at normal points of entry was reported by most local authorities to have worked well or very well. It is an extremely positive picture as table 6 below shows. Again, as last year, some problems in sharing and exchanging information across local authorities were reported by a number of local authorities. Some frustrations were also expressed at the inability of some admission authorities to apply their own admission arrangements correctly and provide correctly ranked lists of those who had expressed a preference for the school.

Table 6: Summary of how well co-ordination worked for admissions at the normal point of entry in 2018 (comparable figures for 2017 admissions in parenthesis)

	Not well	A large number of small problems or a major problem	Well with a few small problems	Very well
Reception	0 (0)	3 (4)	45 (55)	103 (92)
Year 7	0 (1)	6 (4)	61 (52)	84 (93)
Other relevant years of entry	2 (4)	1 (1)	23 (30)	89 (69)

48. Some reports described steps the local authority took to address problems, for example: "*The year 7 rankings were able to be checked before the deadline, and the LA was able to contact the schools for which the local authority is not the admission authority that had made errors in their rankings (approximately 50% some minor, some major). The schools were therefore able to correct them before the deadline*." Table 7 below shows that despite these challenges, in 143 local authority areas all or the majority of rankings were provided to local authorities by the agreed date.

Table 7: Provision of rankings by the agreed date by admission authorities other than the local authority

Proportion provided	None	Minority	Majority	All
Number of local authorities[10]	1	7	73	70

Table 8: The number of local authorities that ranked preferences for admission authorities other than the local authority

Proportion ranked	None	Minority	Majority	All
Number of local authorities	37	49	52	13

49. Table 8 shows that 65 local authorities ranked the preferences expressed for all or the majority of other admission authorities in the local authority area. In 54 local authorities a charge was made for this service. Where local authorities ranked preferences expressed for the majority of admission authorities, those for which they did not provide this service appeared to be those with relatively complicated admission arrangements, often faith related. Three local authorities also, between them, ranked preferences for 23 admission authorities in other local authority areas.

50. Sometimes inaccuracies in rankings were not discovered until very late in the process, including after offer day. Much work was required to deal with incorrect offers. One local authority in this situation described officers spending the "*evening* [of national offer day] *calling the affected applicants and explaining the situation*" and having to *"unpick offers and ensure those places were offered to the correct applicants who had originally missed out on an on-time higher preference offer."*

[10] One local authority does all rankings for all admission authorities in its area so this question was not applicable and the total number of local authorities reporting was accordingly 151.

51. Three local authorities raised a concern about applications for Year 7 (Y7) places at all through schools which admit to YR and then admit additional children at Y7. Children attending such a school can also apply for and be allocated a place in Y7 at another school. Regulations[11] do not provide for a child to be removed from the register of an all through school at the end of the summer term of Year 6 (Y6) on the grounds that he or she has been offered and accepted a Y7 place at another school. Instead, the child remains on the register of the all through school until beginning Y7 at the new school in September. Such a child is effectively "holding" two places. This can mean that other children cannot be offered a place at a preferred school – either the all through school which does not know it will have a vacancy or the secondary school which is expecting the child to transfer. This adds to the complications of co-ordination and affects schools and parents and children alike.

52. Some areas reported a shortage of school places at a normal point of entry. Successfully addressing such shortages needs good will and commitment from admission authorities to meet the needs of local children. One local authority described its experience thus: *"[We had] the issue of having 363 children who had applied on time not being offered any of their preferred schools and only having 221 places. This left 142 children without a school place. Three schools were asked to take a bulge class and agreed."* Other schools also took additional children and as at "*1 March 2019, there were no places available in any schools in the local authority area. After National Offer Day this changed as a number of children selected either independent schools or schools out of the borough. We currently have 38 places across the town."*

53. Overall, the evidence shows that, despite the scale of the task with around 645,000 children joining YR and 604,000 joining Y7, admissions at the normal points of entry are generally efficiently managed across the country and any problems that arise effectively addressed.

54. Table 9, below, shows that, as in previous years, local authorities said that **looked after and previously looked children** in their own area were well or very well served. Good relations with schools and effective team working was often described to me, so that as one local authority could say, of the schools in its area, *"No school or academy has refused a place for a looked after or previously looked after child for admission at the normal point of entry or in year."* One challenge, repeated by several authorities, was the pressure on a relatively small number of good and outstanding schools in a particular area to admit looked after children. This can lead to looked after children being concentrated in a small number of schools and this may be even more the case if a relatively large proportion of the good or outstanding schools are schools with a religious character that give priority to those of the faith before looked after and previously looked after children not of the faith.

[11] Education (Pupil Registration) (England) Regulations 2006 SI2006/1751

Table 9: Local authorities' views on how well served looked after and previously looked after children are at the normal point of admission (responses from 2018 in parenthesis where available)

	Not at all	Not well	Well	Very well	Not applicable
Looked after children	0 (0)	0 (0)	10 (10)	142 (141)	0 (0)
Children looked after outside their home local authority area[12]	0 (0)	1 (6)	36 (35)	112 (108)	3 (2)
Looked after children from other local authority areas[13]	0	0	19	131	2
Previously looked after children	0 (0)	0 (0)	20 (14)	129 (136)	3 (1)

55. Several local authorities described problems establishing whether a child actually was looked after (if a child was looked after by a different local authority) or had been previously looked after. For looked after children sometimes the status of the child was not made clear on the application and it could take some time to confirm the child's status. For example, one said, "*Difficulties only relate to obtaining clear verification of LAC/PLAC status from other authorities due to GDPR and staff availability."* I find it difficult to understand why the GDPR (General Data Protection Regulation) would cause problems in the necessary sharing of information about a child's looked after or previously looked after status. The GDPR and Data Protection Act 2018 place duties on bodies to process personal information fairly and lawfully; they are not a barrier to sharing information where the failure to do so would cause the well-being of a child to be compromised. Delays in processing school admission applications could compromise a child's well-being. The corporate parent (that is the local authority), unless the child is looked after under voluntary arrangements, is responsible for making the application for a school place for the child and should have efficient systems in place to make sure that the child is given the best chance possible.

[12] This refers to cases where a child is looked after by the reporting local authority but placed in care in a different local authority area.

[13] This question was not asked for 2018 and refers to cases where a looked after child is placed in the reporting local authority's area by another local authority

56. There appear to be greater problems in relation to establishing whether some children fall within the Code's definition of previously looked after. That definition says: "*references to previously looked after children in this Code means such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after."* I am told that it is the need to have evidence that the child was adopted (or made subject to a child arrangements order or special guardianship order) immediately after having been looked after that is a major challenge in some cases.

57. As one local authority put it: *"There may be some evidence that the child was looked after at some point and clear evidence that the child is now adopted – but was it, for example, 'immediately following having been looked after."'* This can be further complicated if the child's name has been changed, possibly more than once. I was also told that: "*In some cases, it is very hard to get the evidence. If a child was previously in care then this could be anywhere in the country and the parent/carer might not know where. The local authority team is very diligent and go over and beyond to get the evidence if they can. There is close working with social care colleagues to clarify what is available. It is not easy, for example, to get sight of court orders and particularly when some of the facts of the case are not known."* In addition, several local authorities made comments such as, *"Where a child is previously looked after we ask for a copy of the adoption, child arrangements or special guardianship order and documents or a letter showing that the child was previously in care. In some cases, parent/carers do not have access to these documents, or the relevant local authority no longer retain any record of the child's previously looked after status."* Another local authority said: *"Where decisions are made separately by different admission authorities there is an issue in admission authorities determining proof separately and coming to different decisions for the same child/proofs."* Two local authorities spoke of publishing a list of the documentation needed and this seems helpful.

58. Based both on the reports provided to me and the points made during subsequent telephone conversations between an adjudicator and local authority officers, I am concerned that there are occasions when it is not being established correctly whether or not a child meets the Code's definition of a previously looked after child. This could lead to a child who does in fact meet the test not being given the priority to which he or she is entitled. It can also mean a child might be given priority when he or she is not so entitled. Finally, I have also been given to understand that some families may have been told, possibly by professionals who use different definitions of terms such as previously looked after, that their adopted child would get priority because he or she was a child who had been looked after. If that child did not meet the Code's test of being looked after immediately before being adopted, they were subsequently disappointed to learn the child did not have this priority.

59. Schools were largely described as very welcoming to looked after children and previously looked after children admitted at normal points of admission and, as one would expect, these children were normally allocated their highest preference schools.

Local authorities again reported more challenges in working effectively across local authority boundaries. Table 9 gives the underlying data.

60. I asked this year about arrangements giving **priority to children previously in state care outside of England** and who ceased to be in state care as a result of being adopted. The Minister of State for School Standards had written on 4 December 2017 asking admission authorities to consider including these children in oversubscription criteria as the second highest priority. Guidance on this matter was provided by the Department for Education in August 2018.

61. The responses on this matter reflected a range of attitudes and approaches. Sixty-seven local authorities gave priority (but not necessarily the second highest priority) in their arrangements for 2020 for these children for the 3,997 community and voluntary controlled primary schools for which between them they are the admission authority. In addition, 48 local authorities gave priority for these children for their 196 community and voluntary controlled secondary schools. Many other admission authorities also introduced a priority for these children. In total, figures provided to me indicate that 5,404 primary schools and 619 secondary schools include a priority for these children in their admission arrangements for 2020.

62. Around 20 local authorities seem to believe that the requirement in paragraph 1.7 of the Code for the highest priority to be given to looked after and previously looked after children, already includes these children automatically or, alternatively, that it allows them to be included. One local authority told me: *"The local authority and the schools and academies have always treated LAC* [looked after children] *pupils from abroad in the same way* [as those adopted from care in England] *as we felt they were pupils who were vulnerable and therefore they [the local authority concerned] will continue to do this."* The arrangements for another local authority give the highest priority in the oversubscription criteria for its community and voluntary controlled schools as: *"Looked after children and children who were previously looked after but immediately became subject to adoption, a child arrangements order, or special guardianship order. This includes children who appear to have been in state care outside of England and ceased to be in state care as a result of being adopted."*

63. I am sure these provisions have been introduced with good intentions to support vulnerable children. However, they are not in conformity with the Code as it stands. Currently, the Code requires the highest priority in oversubscription criteria to be given to children who are now or who have been looked after in England. As the ministerial letter and the guidance explain, this highest priority cannot be extended to cover children previously in state care outside of England and who ceased to be in state care as a result of being adopted. Children who have been adopted from state care outside of England can be given a high priority but it can be no higher than second priority (and after the priority for children looked after or previously looked after in England) in order to conform with the Code.

64. Over 50 local authorities expressed reservations about introducing such a priority in advance of a change to the Code. I note that this includes some which had adopted the priority in some form. The reasons given commonly focussed on perceived difficulties in establishing eligibility for the priority. For example, "*The perception is that it will be challenging to obtain and verify the information from overseas or the family required to deliver a fair and transparent process."* Another said, *"We would always wish to support vulnerable children. However, the DfE's advice does not demonstrate how this could be applied or evidenced fairly, clearly and objectively – a fundamental principle of school admissions. It would therefore be open to challenge and could potentially disadvantage another vulnerable child."*

65. Other concerns raised included the lack of capacity to consult on changing the arrangements, the cost of translating papers and perceptions of the contrast with the evidence requirements compared to complying with the Code for a child previously looked after in England (see above). For example, one local authority said, *"We would expect to see a higher number of claims and decisions challenged if there is not absolute parity with the conditions which apply to children adopted in* [England]."

66. Overall, views varied a great deal on this matter. A few local authorities appeared very relaxed about introducing the priority as they did not anticipate many children likely to seek priority under the criterion. Others welcomed the opportunity because of its relevance to their circumstances with one saying: *"As a local authority that borders Wales,* [the local authority] *believes it is logical to extend this criterion to children who might be adopted from care in one of our neighbouring Welsh local authorities."* At the other end of the spectrum, one local authority said that it consulted on introducing a priority for these children but, "*The responses to our consultation were, however, overwhelmingly resistant with the vast majority of respondents disagreeing with the inclusion of adopted children outside of England criterion."*

67. Around ten local authorities said that they will use or have extended an existing priority for social need to include these children as in "*Children for whom it can be demonstrated that they have a particular medical or social need to go to the school, which includes children previously from abroad who were cared for by the state because he or she would not otherwise have been cared for adequately and subsequently adopted."* The use of this as a priority will only provide an advantage if there is evidence that only one school will meet the child's needs and so its application is likely to be very limited.

68. Many local authorities commented on the admission of children with **special educational needs and/or disabilities** (SEND) in the normal admissions rounds. The messages were largely positive, as in previous years. Many noted that all schools should be able to meet the needs of most children but as one local authority said, "*It is difficult to generalise about practices across more than 100 schools. In general, schools are very supportive, welcoming and skilled".* Notwithstanding this generally positive picture, I was again told of some cases where the behaviour of a school resulted in parents asking for that school not to be named on a child's education, health and care plan (EHC plan). One

local authority described how, "*in some cases where discussions have taken place between the schools and families, the families' confidence in the school's ability to meet their child's needs are lost and they then request an alternative, or specialist placements."* Another local authority pointed out that those schools which sought to be inclusive and welcoming *"at times are a victim of their own success in being oversubscribed with high numbers of* [children with] *EHC plans."*

Admissions other than at the normal point of entry (in year admissions)

69. There is no requirement on local authorities to co-ordinate in year admissions or on admission authorities to take part in any in year co-ordination which local authorities do organise. Many local authorities have consistently over a number of years argued that local authorities should co-ordinate in year admissions. I will not repeat those views now as they can be read in past reports https://www.gov.uk/government/publications/osa-annual-report. This year I asked, for the first time, how many local authorities knew the number of in year admissions to schools in their area. Forty-nine said they did not know the number of primary and 46 the number of secondary school in year admissions in their areas. This means that for this reporting year about one third of local authorities do not know the total number of children admitted to schools in their area in year. For 2019, 34 local authorities provided no data on in year admissions in the previous academic year for primary schools and 29 for secondary schools.

70. Some local authorities in providing numbers of in year admissions made clear that these were the numbers of which they were aware while being certain that there were other in year admissions of which they had no details. As in past years, local authorities pointed out that some schools failed to inform the local authority of in year admissions. One local authority said that 4 admission authorities in its area had provided no updates since 2017 and that a further 11 had not done so since 2018.

71. In addition, 11 local authorities said that they did not use the information provided to them. Paragraph 2.22 of the Code says, *"Own admission authority schools **must**, on receipt of an in-year application, notify the local authority of both the application and its outcome, to allow the local authority to keep up to date figures on the availability of places in the area."* If some schools do not provide the relevant information to the local authority and the local authority does not use the information that is provided then the important business of finding places for children who need them could be affected.

72. Table 10 provides the totals for the numbers reported to me for in year admissions. While the numbers provided to me cannot give an accurate total for the number of admissions in year across England, they do provide a useful starting point.

Table 10: The number of children reported by local authorities as admitted to school in year (figures provided in 2018 in parenthesis)

	1 September 2017 to 31 August 2018	1 September 2018 to 31 March 2019
Primary aged children	241,293 (261,956)	182,905 (218,981)
Secondary aged children	104,675 (102,083)	80,440 (92,589)
Totals	345,968 (364,039)	263,345 (311,570)

73. The number of in year admissions varies significantly from local authority to local authority. This is not just a function of the number of children living within an area – there are variations even taking account of the different sizes of local authorities. For example, one local authority with around 40,000 primary aged children reported nearly seven thousand in year admissions in the period 1 September 2017 to 31 August 2018 and a similarly sized local authority reported about half that number.

74. Table 11 shows the trend in numbers of in year admissions over time. It is also based on partial information as from September 2013 local authorities were no longer required to co-ordinate all in year admissions. Table 11 suggests that the number of in year admissions has reduced in that period. However, this may not be the case as it probably reflects in part at least an increasing number of local authorities with no or partial data. As the total number of pupils in schools has grown every year since 2009 with an increase of one per cent between 2018 and 2019, it seems likely that the number of in year admissions is significantly more than has been reported to me.

Table 11: The number of children as reported by local authorities admitted to school in year between 2013 and 2019

Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19 (seven months only)
Number of children	379,813	380,053	393,479	364,039	345,968	263,345

Table 12: Numbers of local authorities co-ordinating in year admissions (figures from 2018 in parenthesis)

		Local authority co-ordinates most or all	Local authority co-ordinates minority or none
Community and voluntary controlled[14]	Primary	124 (125)	25 (24)
	Secondary	82 (88)	22 (22)
Voluntary aided, foundation and academy	Primary	110 (108)	42 (40)
	Secondary	101 (108)	50 (40)

75. The evidence provided in table 12 shows that local authorities co-ordinate in year admissions for the majority of schools. Many local authorities said that the majority of admission authorities acted in a lawful and appropriate manner when dealing with in year applications. However, it was also clear that many local authorities also felt that some admission authorities did not behave in this way. Local authorities are clear that it is only a minority of admission authorities who fail to apply the Code properly or to engage with the local authority when it is seeking to find places for children in year. Local authorities also express considerable frustration at a perceived lack of consequences for schools who behave in this way. Local authorities tell me that they too often feel they have to give up trying to persuade particular schools to admit a child and instead look for places at other schools. As one local authority said, "*If such actions go unchecked, it can only be to the detriment of those inclusive schools who will become over burdened with challenging pupils."*

76. Table 13 provides a summary of the responses to my questions about how well the admissions system meets the needs of particular groups of children. This table is in two parts. The first concerns closely defined groups of children about whom local authorities will generally have a good deal of information. For them, table 13 shows that 149 local authorities reported that **looked after children and previously looked after children** were at least well served when they needed a place in year. I was told of different approaches to try to make sure that there were no delays to the admission of looked after and previously looked after children. For example, in one area, the "*Virtual School and school admissions have jointly constructed a new policy for social workers outlining the procedures which they should follow when applying to secure school places"* in other local authority areas. Another local authority has appointed an admissions lead and has "*an expectation of a Planning For Success meeting in school before a start date is agreed between social worker, a Learning Advocate, carer and the school."* However,

[14] Three local authorities have no community or voluntary controlled schools and a further 45 have no community or voluntary controlled secondary schools.

26 local authorities (17 per cent) reported that the children they looked after were not well served when places for them were sought at schools in other local authority areas. Around 35 local authorities commented that it is harder to gain admission for a looked after child in some other local authority areas. In part this was ascribed to a lack of knowledge on the part of those responsible for gaining a place for the child but in part also to different practices and cultures in different local authorities. Several local authorities requested that aspects of the Code relating to in year admissions be clarified, in particular, in relation to looked after children.

77. I turn now to the second part of table 13 which concerns children with SEN but no EHCP and other children. In relation to these children, it seemed on the basis of information provided in the past that local authorities may not have much or any information about how well served they were when they needed a place in year. I therefore asked local authorities to tell me if they did not know how well served these children were.

Table 13: Summary of responses in relation to specific groups of children and how well served they are by in year admissions (figures provided in 2018 in parenthesis)

	Not at all	Not well	Well	Very well	Not applicable
Looked after children	0 (0)	2 (2)	49 (41)	100 (108)	1 (0)
Children looked after in other local authority areas[15]	0 (0)	26 (20)	80 (84)	43 (42)	3 (5)
Looked after children from other local authority areas	0	4	60	86	2
Previously looked after children	0 (0)	1 (1)	62 (49)	88 (100)	1 (1)
Children with an EHC plan	0 (0)	6 (4)	57 (56)	89 (91)	0 (1)

[15] This refers to cases where a child is looked after by the reporting local authority but placed in care in a different local authority area.

	Not at all	Not well	Well	Very well	Don't Know
Children with SEND but no EHC plan	0 (0)	16 (10)	84 (85)	48 (53)	4
Other children	0 (1)	5 (6)	79 (79)	65 (57)	3

78. The feedback received on children being educated in the area of the reporting local authority but looked after by another local authority was positive. However, one local authority explained, "*Too often …the home LA only becomes aware of the child needing a placement sometime after they have moved to the area. An application then has to be submitted and sent to schools to consider. All of this creates a delay which leaves the child missing education."* This local authority suggested national guidance for social workers and carers.

79. Most local authorities judged that **the needs of children with an EHC plan** who needed a place in year were at least well met. Several local authorities made similar comments to one which said "*There are some highly inclusive mainstream schools who are open to admitting children and young people at any time and work with the local authority where there is a need for additional resource to support the individual. There are, however, some schools which will refuse to admit as a matter of course and this becomes harder the later in the academic year this is and most specifically in key year groups e.g. Y6, Y10 & Y11."* In some areas it was also reported that there were insufficient specialist places available and that the number of children with EHC plans was increasing.

80. For **children with SEND but no EHC plan** there were positive approaches described to me, such as: "*processes work well in the main for pupils without EHCPs. Protocols have been agreed by all schools that outline the expectations placed on them. Most placements are arranged quickly with appropriate assessments taking place once the child is on roll."* However, this local authority continues, *"The main concern would be that it can take longer to place some children into education, than desired. Delays are caused by concerns being raised by schools during the allocation process. These concerns include budgetary constraints, lack of trained support staff, the number of children with needs already being supported and the concern that the child's need mean they will struggle to cope in a mainstream environment."* There was considerable concern expressed to me that some schools will not agree to admit a child with SEND but without an EHC plan unless additional resources were agreed. Several local authorities also found that "*Many parents report not making a formal application to a school as they are told when they initially make contact to apply that the school is unable to meet their child's needs."* These challenges may explain why 16 local authorities did not think the

needs of children with SEND but no EHC plan were well served when seeking admission in year.

81. For **in year admission of other children** (those not looked after, previously looked after or with SEND), as shown in table 13 above, the great majority of local authorities reported that these children were well or very well served.

82. As in past years, local authorities referred to "vulnerable" children as those who generally found it hardest to find places in year. Local authorities drew attention to the fact that such children were more likely to live in families with significant challenges and without the capacity to understand and make sense of the admissions system. Section 94 of the School Standards and Framework Act 1998 requires admission authorities of schools to make arrangements to allow parents to appeal against decisions to refuse entry following an application. However, as one local authority explained "*making an appeal can be a daunting step for parents and they would not necessarily understand the complexities of school admissions to understand if their application had been dealt with correctly, or how to challenge this. Furthermore, vulnerable families may not have the ability to take such action and this may lead to our most vulnerable children missing education."* Another local authority said "*There are many families moving into the area from abroad and it appeared that too often, if a family was told that there were no places and the child would be put on a waiting list, no further information was provided. This meant that the child would wait patiently for a place unaware that there were other avenues such as appeal or places at other schools. The local authority therefore lacked confidence that parents were being advised of their rights and opportunities."*

83. One local authority explained it had responded to a growing problem of vulnerable children being out of school for too long by working with a wide range of professionals (the virtual school, alternative providers, groups of headteachers and others) to agree a policy, which it called 'the standard'. The standard established agreed practices and timescales across all admission authorities which was summarised in a flowchart. The intention is that every school should have the flowchart on its website so that parents and frontline staff can easily understand duties, processes and rights. The implementation of this standard is supported through senior officers, a compliance body of the local authority and sharing examples of inappropriate practice with headteachers.

Fair access protocols

84. Some children seeking a place in year will fall within the scope of the fair access protocol (the protocol) that **must** be agreed with the majority of schools in each local authority area. The purpose of the protocol is to make sure that, outside of the normal admissions rounds, unplaced children, particularly the most vulnerable, are offered a place at a suitable school as quickly as possible. Ten local authorities reported that their protocol was not agreed with primary schools – mainly because there were very few children of primary school age who might be considered under such a protocol.

85. Table 14 shows the number of admissions I was told resulted from the use of protocols in recent years. In some areas, the numbers recorded as admissions through the protocol are zero or very low. One local authority reported nearly 2,000 admissions through the protocol but assures me it is taking steps to achieve "*greater clarity about appropriate referrals for fair access consideration".* I should emphasise that I make no comment on appropriate practice in terms of which groups of children should be covered by the protocol or when its use should be triggered. That is a matter for each area, provided the requirements of paragraph 3.15 of the Code are met.

Table 14: Reported admissions to schools through the protocol over time (by financial years)

	2016 – 2017	2017 - 2018	2018 – 2019
Primary	7,486	7,665	8,210
Secondary	10,615	11,882	12,268
Total	18,101	19,547	20,478

86. It is clear that many children who need a place in year find one through the effective use of protocols. The children for whom – even with the protocols – it is most difficult to secure a school place tend to be those with challenging behaviour. Paragraph 3.12 of the Code says, "*Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it* ***must*** *refer the case to the local authority for action under the Fair Access Protocol. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children."* Reports from some local authorities suggest a view that some admission authorities rely on paragraph 3.12 too much in order not to admit certain children. There were, as in other years, requests for clarification or further guidance on what should be considered to constitute *"challenging behaviour"*.

87. In some areas, however, I was told that the problem is a simple shortage of places and the local solution may be to address this by using the protocol to find places for those who need them. In addition, where there is an increase in demand for in year places caused by people moving into the area this can lead to a commensurate increase in the number of children seeking a place through the protocol. One local authority explained the challenges that can be created: "*Increasing pressure for school places based on housing and inward migration, has led many schools …being over number in every year group. Schools with places available tend to be those in an OFSTED category and this has compounded the difficulties in seeking Fair Access admissions."*

88. While the protocols and panels make an important contribution to securing places for children who need them, they do not always run smoothly. Local authorities remained

concerned about the length of time it could take to secure a place for a child and, as part of this where a child had previously lived in or been at school in another area, the amount of time and effort that had to be expended to secure information about children from other local authorities in order to allow the panel to make an informed decision about the best school for the child. Linked to this, some local authorities were not confident that they were permitted to ask for or provide information on children in advance of admission.

89. I was also told by some local authorities that some admission authorities in their area do not to engage fully or at all with the protocol processes. This might manifest as schools failing to respond to enquiries or making the process more protracted by asking for further unnecessary information. They might also refuse to accept a decision by the panel and refuse to admit a child on the panel's recommendation. I am told that when this happens it is not unusual for a local authority to approach another school to prevent the child being out of school for a prolonged period.

90. If some schools do not play their proper part, there is a risk of a loss of good will and co-operation on the part of other admission authorities. This can be exacerbated if the schools less willing to admit children in accordance with panel processes also tend to exclude more children permanently than other schools. For example, one local authority said, "*academy trusts … raise concerns with respect to variable thresholds for permanent exclusion and a resultant (perceived) inequity: those schools/trusts that exclude fewer pupils feel reluctant to admit excluded pupils from those schools/trusts that exclude more, given that this is inevitably not reciprocated."*

Directions to admit

91. In some circumstances, local authorities have the power to **direct** certain maintained schools to admit the child or to ask the Secretary of State to direct an academy to admit a child where a child needs a school place. I should make clear that these powers are – quite rightly - used very rarely. Only 34 local authorities reported using these powers in 2019 although I was told that telling an admission authority that the local authority was considering their use often led to a child being admitted. Several local authorities told me that good working relationships with schools meant that there was no need to direct or seek a direction. One said, "*We have had little or no need in recent years to direct a school to admit and this is a tribute to the relationships we have with schools and the generally inclusive approach."* Others said that they did not want to endanger relationships by making or requesting a direction. It will also be the case that in some areas there will be no children for whom a place cannot be found and no need to invoke these powers.

92. Tables 15 and 16 show the numbers of directions reported to me. However, despite the small numbers of directions many concerns were expressed to me about the processes for directions. These included:

a. The time taken to complete a direction. Concerns on timing were most commonly expressed in relation to requests made to the ESFA to direct an academy to admit a child but concerns also related to directions to maintained schools. Over 25 local authorities[16] told me that it took far too long, often up to four months or more, from the date of asking the ESFA to make a direction to receiving a decision.

b. The effect on the child concerned of the length of the process. I was frequently told that the local authority will approach another school rather than face the prospect of the child's remaining out of school for around four months. In addition to missing education, children out of school can be vulnerable to becoming involved in anti-social behaviour and may also suffer from feeling rejected or unwanted. For looked after children, these factors can contribute to care placements failing.

c. As with the reports in relation to the use of protocols, some admission authorities reportedly refused to engage properly and promptly with the direction process. This included failing to reply to correspondence or doing so very tardily.

93. Securing a direction was not always the end of the story. I was also told of instances of academies seeking to delay admission after a direction from the ESFA to admit the child.

Table 15: Number of directions reported by local authorities to have been made in the year 1 April 2018 to 31 March 2019 (number for period 1 April 2017 to 31 March 2018 in parenthesis).

	Local authority directions for a child not looked after	Local authority directions for a child looked after	Local authority directions in other local authority areas for a child looked after	Total
Primary	10 (10)	8 (7)	5 (1)	23 (18)
Secondary	15 (20)	6 (5)	16 (7)	37 (32)
Total	25 (30)	14 (12)	21 (8)	60 (50)

[16] Including some who had not actually sought a direction

Table 16: Number of requests for directions reported by local authorities to have been made to the ESFA in the year to 31 March 2019[17] (figures provided for year to 31 March 2018 in parenthesis)

	Requests by local authorities that ESFA make a direction for children not looked after	Children admitted following a direction by the ESFA	Requests by local authorities that ESFA make a direction for children looked after	Children looked after admitted following direction by ESFA	Outstanding as at 31 March 2019
Primary	5 (7)	2 (7)	2 (2)	2 (1)	2 (1)
Secondary	17 (22)	7 (15)	15 (10)	11 (11)	5 (7)
Total	22 (29)	9 (22)	17 (12)	13 (12)	7 (8)

Elective home education

94. All 152 local authorities provided the number of children recorded as home educated in their area as at 29 March 2019. Parents are not required to register their children as electively home educated so this number will be fewer than the actual total of home educated children. The total number of children local authorities reported as being electively home educated was 60,544 compared to 52,770 as at 29 March 2018. This is an increase of 7,774 or 14.7 per cent. The data provided shows some reductions in the numbers of electively home educated children in a minority of local authority areas.

95. Several local authorities pointed out some children were home educated only for a limited period. One local authority, which had had nearly one thousand new registrations within the academic year, said that 60 per cent of cases were closed (by which we understand the child to have returned to school or reached the end of compulsory school age) in no more than a year. This high turnover appears to relate to the reasons for choosing elective home education. Over 100 local authorities commented on elective home education and echoed the points made in last year's report where I outlined concerns expressed by many local authorities that some parents may opt to educate their child at home but not actually be able to provide education which fully meets the child's needs. https://www.gov.uk/government/publications/osa-annual-report

[17] There may have been requests for directions outstanding from before 31 March 2018. These will affect the figures so that it is possible, for example, to record more directions to admit than requests for directions.

Other matters

96. Over 60 local authorities took the opportunity to raise other matters with me. In the main, each matter was raised only by one or two local authorities but over 25 local authorities raised concerns about the admission of **summer born children** to school. I was told that some parents do not apply at all for the normal point of entry and assume that their child will be admitted to YR when their chronological age is for Year 1 (Y1). This included comments such as, *"We get several requests for delayed entry after the 15 January deadline and more once term has started, which adds more complications to the matter and could be seen as a way to default a request being granted because the parent has not applied at the correct time, and bypassing the process carefully put in place."*

97. The DfE issued advice on the admission of summer born children for local authorities, school admission authorities and parents in December 2014. This clearly states that children born between 1 April and 31 August are not required to start school until they reach compulsory school age which is a complete school year after the point at which they could first have been admitted. The decision for the admission authority, if a parent decides that their child will start school at this point, is which year group the child will join – normally either YR or Y1. The admission authority is required to make that decision on the basis of the circumstances of the case and in the best interests of the child concerned.

98. Of course, the admission authority which provides its view on which year group is appropriate for a child for whom admission is postponed may not be the admission authority which admits the child if the parent decides to postpone the admission until the year when the child reaches compulsory school age. I am also being told that there are further complications when the parents of children educated outside of their normal year group consider secondary education. Normally parents apply for secondary schools when their child is in Y6 but in these cases the child will be in Year 5 at this point. Parents cannot assume that the admission authorities for the secondary schools which they may be considering stating as a preference, will admit a child who has been educated outside his or her chronological age group to Y7 as opposed, say, to Year 8. Again, admission authorities have to consider each such case on its merits, including taking account of whether the child has been educated outside their normal age group thus far, and the interests of the child concerned. The Code says every admission authority **must** make clear in their admission arrangements the process for requesting admission outside the normal year of admission.

Appendix 1 – The role of the OSA

99. 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 requests from local authorities that an academy should be directed by the Secretary of State to admit a particular child.

100. 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.

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

102. Over the period covered by this report there were ten adjudicators, including the Chief Adjudicator. Adjudicators are supported by five full-time equivalent staff. The Secretary to the OSA leads these staff well and they are much appreciated by the adjudicators for their hard work, knowledge, efficiency and good sense. Each year the staff work effectively to manage a workload which varies across the year, peaking in the summer when nearly all admissions cases have to be dealt with.

103. The OSA's costs in the financial year April 2018 to March 2019 fell compared with the previous financial year. The most recent adjudicator appointments having been made in Spring 2017 and no adjudicators having stopped serving during the period means that we enjoy a stable and experienced cadre. This in turn has allowed us to cut the costs of training and expenses and the average cost per case in adjudicator fees has also fallen.

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

105. At the completion of each case, the OSA seeks feedback from all involved on how the matter was handled. This year 441 forms were sent out and 95 (which is 22 per cent) returned. The great majority of those who responded were satisfied with the service provided by the OSA staff and by the adjudicator assigned to the case and felt that they understood our processes and were kept well informed of the progress of their case. We do continue to receive requests for more information about when a case will be completed. While this is difficult to give as it depends on the volume of cases submitted to us, the extent of comments made by the different parties and the numbers of exchanges of comments, we are considering whether we can improve our ability to indicate when we expect to complete cases. I was particularly pleased to receive several responses similar to one which said: "*I think the ruling is fair and well reasoned, even though all parts of my objection were not upheld I can follow the logic of the ruling…*". One very kind response from a diocese said *"… once again my involvement with the OSA has been a positive experience. … that experience gives me confidence in being able to guide and advise my schools that having to deal with the OSA will not be an arduous or overly bureaucratic process. [The OSA] system is … user friendly, open and clear*."

106. We inadvertently released an objector's identity in a case where we had undertaken to withhold this from the other parties to the case. I made a personal apology on behalf of the OSA for this lapse.

107. We received ten requests for information that cited the Freedom of Information (FOI) Act. I note that in some instances those seeking information make requests citing the FOI Act when we would in fact be willing and able to release the information sought in response to a simple request. In two cases we did not release the information requested as this was subject to legal professional privilege and hence exempt under section 42 of the FOI Act. In one case we did not hold the information requested and in the remaining seven we released the information requested (redacted as necessary to comply with data protection requirements).

Appendix 2 - OSA expenditure 2018-19 and 2017-18*

Category of Expenditure	2018-19 £000	2017-18 £000
Adjudicators' fees	370	388
Adjudicators' expenses	15	19
Adjudicator training/meetings	45	47
Office staff salaries	163	162
Office staff expenses	4	4
Legal fees	14	14
Judicial review costs	0	0
Administration/consumables	1	1
Total	**612**	**635**

*Information relates to financial years 2017-18 and 2018-19. The report covers the academic year 2018/19.

Appendix 3 – Table Index

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