



Office of
the Schools
Adjudicator

Office of the Schools Adjudicator annual report

September 2012 to August 2013

November 2013

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Introduction

This report, my second as Chief Adjudicator, covers the period 1 September 2012 to 31 August 2013.

The OSA team of adjudicators and office staff has worked hard to deal with all matters referred to us and, as necessary, to point enquirers in the right direction to other bodies when an issue is outside the jurisdiction of an adjudicator. We have responded as quickly as possible to requests for information and to cases that require a decision by an adjudicator to be published in a determination without compromising the need for all matters to be handled properly with integrity and impartiality.

The format of this report mostly follows that of my first report. It makes some comparisons with work in previous years, reports on issues from the last year and suggests action that is required in response to some main findings. Of particular relevance this year, the second year after changes introduced by the Education Act 2011 and the School Admissions Code 2012 is the impact of the new legislation on admission arrangements for schools.

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

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November 2013

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Executive summary

1. The Office of the Schools Adjudicator (OSA) has had a busy year, with the variation in the number of cases at any one time that we have come to expect. The build towards the summer peak began earlier this year and for the winter months the case load remained steady and low. There have been changes in the staff resulting in a year with 14 adjudicators at one time or another, but only nine over the busy summer period, and eight administrative staff, with everyone in the OSA team except three of the administrative staff working part-time.
2. The Education Act 2011 and the associated new regulations and School Admissions Code (the Code) brought changes to the work of the OSA. For the first part of the year we had to remember that we might have to deal simultaneously with some cases under the old legislation and others under the new. All admission authorities have had to check carefully for compliance with the appropriate legislation.
3. **Objections to admission arrangements** for all types of schools are within the OSA's remit and have accounted for the largest part of our work, with more new cases but for fewer individual admission authorities than last year. Once again there were more referrals from parents than any other group. There remains a misunderstanding among some parents about achieving fairness in admission arrangements overall and what those parents regard as fair for their child.
4. A continuing concern is that despite the mandatory requirements of the Code and comments in previous annual reports, we have again found admission authorities that are not meeting the requirements for consultation, determination and publication of their arrangements. This results in parents and others being unable to consider the arrangements and, if necessary, object as permitted by the Code. It also leads to late objections when eventually parents do see them. The objections relate to matters that are mostly the same as in previous years, but the complexity of cases has increased as has the complexity of some of the arrangements.
5. The number of requests for a **variation** to determined admission arrangements for maintained schools has fallen again this year. We anticipate that the number may fall further and then level out in future years where limited individual or unusual circumstances mean that an adjudicator is still needed to consider whether or not the variation should be approved.
6. Appeals against a local authority's notice to **direct** a maintained school to admit a child have formed a tiny part of our work. It remains a concern that, despite drawing attention to the matter in previous years, cases continue to be found to be out of jurisdiction because the local authority has not met the requirements of the School Standards and Framework Act 1998 before notifying the school of its

intention to direct the school to admit the child. The result of failing to comply with the Act is that the child is out of school for longer than s/he should be.

7. There has been a further fall in the number of **statutory proposals** referred to the OSA compared with previous years. Cases mainly involve proposals to form a community primary school from separate community infant and junior schools. Occasionally a case is referred to the Adjudicator either because the local authority has not made a decision in the prescribed two month period or the governing body of a school appeals against a decision taken by the local authority.
8. Once again the number of **land transfer** cases concerning maintained schools has been small. Every case seems to be unlike any other and adjudicators have to be prepared at times to engage in a site visit and make a careful check of historic documents.
9. Local authorities in England are required to prepare a **local authority annual report** that must be sent to the Adjudicator by 30 June. They must also meet the requirement to publish the report locally. This year 151 of the 152 local authorities prepared and sent their report to the OSA, not all on time, but more quickly than in previous years. The scope of the report is set out in the Code which prescribes what must be included and makes provision for local authorities to raise other issues.
10. Overall, admission authorities have responded promptly to the 2012 Code by amending their arrangements to give the highest priority as the first oversubscription criterion to looked after children and previously looked after children. However, there have been some difficulties where the oversubscription criterion is not worded correctly such that previously looked after children have not been properly specified separately from looked after children and where the definition of a previously looked after child is not accurate.
11. The application of fair access protocol procedures is again mostly working effectively in placing children who do not have a school place in the school that best meets their needs. Most schools work well with their local authority in ensuring a place is available, but a few schools, a small minority, do not co-operate fully and delay or resist unjustifiably the admission of a child. Very few cases indeed have resulted in a direction to a school to admit.
12. The 2012 Code is a more concise document than earlier Codes and there is no excuse for any admission authority not to read it and comply with its requirements. Some of our findings about the objections referred to the OSA clearly indicate that either the admission authority had not read the Code and had inadvertently failed to comply or had not understood that the Code sets mandatory, not optional, terms that must be met. Paragraph 14 sets out the *“Overall principles behind setting arrangements”* and says, *“In drawing up their admission arrangements admission*

*authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

13. Rather than offering recommendations for action this year there are main findings and actions required that would, if acted on, improve further the fair access for all children to schools.

Main finding 1. Too many admission authorities do not comply fully with the Code in respect of consultation about and determination of their admission arrangements as summarised in paragraph 15 of the Code. Neither do they check that their arrangements conform with the principles behind setting admission arrangements as explained in paragraph 14 of the Code.

Action required. All admission authorities must comply with the requirements of the Code in respect of consultation about and determination of their full admission arrangements. They should check their arrangements carefully against paragraphs 14 and 15 of the Code. Local authorities should take firmer action with admission authorities to ensure they consult parents and all those listed in paragraph 1.44 of the Code so that they have the opportunity to comment on proposed changes to arrangements.

Main finding 2. Too many admission arrangements for admission to sixth forms fail to comply with the requirements of the Code.

Action required. All schools that admit students new to the school into the sixth form need to ensure they comply with the general requirements of the Code, including those for consultation, determination, a published admission number for new students and publishing the arrangements. The arrangements also need to include any matters that apply specifically to the sixth form. Local authorities need to ensure that they play their part and meet in full the requirement in the School Information (England) Regulations 2008 to include the arrangements for admission to sixth forms in a composite prospectus.

Main finding 3. Admission arrangements for all relevant age groups are often difficult to find on a school’s website; do not make clear the school year to which they apply; or are incomplete.

Action required. Admission authorities need to be more responsible in publishing their admission arrangements once determined and local authorities should make checks to ensure that admission authorities meet the requirements of the Code about publishing their arrangements.

Main finding 4. New schools and those that become their own admission authority do not always fully understand their responsibilities for having lawful admission arrangements that comply with admissions law and the Code.

Action required. The Department for Education should ensure that there is clear guidance for new schools and those that change their status to become their own admission authority about the requirements and timetable to be followed concerning admissions matters.

Main finding 5. The practice of some primary schools of giving priority for admission to the reception year to children who have attended particular nursery provision has been found to be unfair to other local children.

Action required. The Department for Education should consider issuing guidance for schools and local authorities so that there is fair access to schools for all children on reaching compulsory school age in order that children are not disadvantaged by any decisions their parents make about the care of their children prior to compulsory school age or by access to specific child care.

Background

14. The OSA was formed in 1999 as a consequence of section 25 of the School Standards and Framework Act 1998 (the Act) which gives the Secretary of State the power to appoint “persons to act as adjudicators”. It has a remit across the whole of England.
15. Adjudicators resolve differences over the interpretation and application of legislation and guidance on admissions and on statutory proposals concerning school organisation. The adjudicators have five main functions.

In relation to all state-funded schools adjudicators:

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

and in relation to maintained schools adjudicators:

- decide on requests to vary determined admission arrangements;
- determine appeals from admission authorities against the intention of the local authority to direct the admission of a particular pupil;
- resolve disputes relating to school organisation proposals; and
- resolve disputes on the transfer and disposal of non-playing field land and assets.

16. The Chief Schools Adjudicator can also be asked by the Secretary of State for Education to provide advice and undertake other relevant tasks as appropriate.
17. At 31 August 2013 there were nine adjudicators, including the Chief Adjudicator. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. Their role is to look afresh at all cases referred to them and to consider each case on its merits in the light of legislation, statutory guidance and the Code. They investigate, evaluate the evidence provided and determine cases taking account of the reasons for disagreement at local level and the views of interested parties. Although there is no legal requirement for adjudicators to hold meetings with the interested parties they may do so if they consider it would be helpful to them as they investigate a case.
18. Adjudicators are independent of the Department for Education (DfE) and from each other. They work alone in considering a referral unless the Chief Adjudicator assigns a particular case or cases to a panel of two or more adjudicators, in which circumstances the panel will consider the case(s) together. All adjudicators,

including the Chief Adjudicator, are part-time, work from home and take adjudications on a 'call-off' basis. All may therefore undertake other work at times when they are not working for the OSA provided it is compatible with their role as an adjudicator.

19. The Act provided for adjudicators to be supervised by the Council on Tribunals subsequently the Administrative Justice and Tribunals Council (which was abolished on 19 August 2013), and to adhere to a Code of Conduct. They do not normally take cases in local authority areas where they have worked in a substantial capacity in the recent past, or where they currently live or where they have previously worked closely with individuals involved in a case or for any other reason if they consider that their objectivity might be, or perceived to be, compromised.
20. The OSA is a tribunal, and all adjudicators work within tribunal legislation and procedure. Decisions, once published, cannot be challenged other than through the Courts.
21. Determinations are legally binding on local authorities and all schools. As appropriate they are checked before publication by the Chief Adjudicator and by lawyers for their legal accuracy. Adjudicators must consider each case against the current legislation and for admissions matters must also consider each case against the Code. They cannot be bound by similar, previous cases and determinations as they are required to take the specific features and context of each new case into account as well as apply the relevant legal provisions.

Review of the 2012 report recommendations

22. The 2012 Annual Report concluded with five recommendations for schools, local authorities and the DfE.

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

Recommendation 1 - All admission authorities must comply with the requirements of the Code in respect of consultation about; determination of; and publication of their full admission arrangements. In particular, failure to publish as required denies parents the opportunity to object in a timely manner to arrangements that they deem limit fair access in their locality.

24. This recommendation has not been acted on with due attention by all schools that are their own admission authority. There have been too many cases this year where the adjudicator has found that the admission authority had not consulted properly in accordance with the law and Code, or had not determined its arrangements by 15 April, or had not published its arrangements, or had not met any of these requirements. It is unacceptable that admission authorities do not meet the basic requirement for having lawful admission arrangements.

Recommendation 2 - Schools with sixth forms need to ensure they have admission arrangements for entry to the sixth form that meet the requirements of the Code. Students seeking a place should not be hindered in their search by hard to find, incomplete or unclear admission arrangements.

25. Regrettably once again a significant number of schools with sixth forms have not met the requirements in relation to admissions. It is a matter of concern that far too many schools do not seem to understand the duties placed on them to meet the terms of the Code and determine lawful admission arrangements for admission to the sixth form. There appears to be something of a misunderstanding about the fact that the Code applies to admission to the sixth form in the same way as to other first admission to a school, differing only in respect of the specific provisions that are set out for sixth forms.

Recommendation 3 - Local authorities that are concerned about the number of late applications should use their contacts with the local press and other media to publicise the closing dates for applications. This would remind parents to apply in time for their preferences for a school place to be given full consideration.

26. There is limited information available, but some local authorities have made a particular point of referring to the action they have taken to try to reduce the number of late applications. The problem of late applications has not been solved,

but some progress has been made in reducing the number of children for whom applications are made after the closing date.

Recommendation 4 - Local authorities need to ensure that they meet the statutory requirements for making a direction to a maintained school before issuing a notice of intention to direct the admission of a child. This is essential to ensure that the process is not delayed and a child does not remain out of school for any longer than absolutely necessary.

27. Progress has been made, but of the two appeals that the OSA has received against a notice of intention to direct a school to admit a child, there was still an instance where the process was delayed because the local authority had not met the requirements of the Act before issuing its letter of intention to direct the school to admit the child.

Recommendation 5 - The Department for Education should issue guidance for all local authorities and academy schools to follow if it is considered necessary to seek a direction for an academy school to admit a child to limit the time the child is not attending a school.

28. The Department published guidance on “Fair Access Protocols: Principles and Process” in November 2012. This can be found through the link www.education.gov.uk.

Review of the year 2012/13

29. Overall the OSA has had a busy year, but with a very uneven workload across the year. For half the year the number of cases being considered at any one time was very low and then throughout the late spring and summer the team was often struggling to deal with the high number of cases as speedily as we would wish. The changes to the OSA's remit brought about by the Education Act 2011 have been fully absorbed. Despite information available about the remit of the OSA we receive many enquiries and requests for advice that we are unable to deal with, as they are not strictly within our remit. Parents, for example, ask for help with the admission of their child to a school, and local authorities and others often ask about the application of legislation. Wherever possible we try to indicate which other body may be able to help them solve their problems. Where appropriate the OSA has referred matters to the DfE or Education Funding Agency (EFA).
30. I have had regular meetings with Ministers and DfE officials to report on the work of the OSA and to try to ensure the OSA works efficiently and effectively with the Education, Choice and Access Division (ECAD), our sponsor division, while at the same time maintaining the OSA's independence which is an essential requirement for a tribunal and for maintaining public confidence in our decisions. As Chief Adjudicator I have met, when appropriate, throughout the year with groups and organisations that share an interest in our work, and I have spoken on issues related to our work, primarily admissions, at a number of conferences.
31. The adjudicator team has changed during the year covered by this report. I have been especially grateful to those adjudicators who stayed beyond the expected end date of their appointment to help complete cases and for the rapid induction of new colleagues. The demands over the summer were carried by a smaller team than last year and without the dedication to duty of the team many more cases would have been unresolved before the beginning of the new school year.

The team over the year has been:

Andrew Baxter (to 31 December 2012)

Ann Talboys (from 15 April 2013)

Canon Richard Lindley (to 31 October 2012)

Carol Parsons

Cecilia Galloway

David Lennard Jones

Dr Bryan Slater

Dr Elizabeth Passmore OBE

Dr Melvyn Kershaw OBE (to 30 November 2012)

Dr Stephen Venner (to 15 July 2013)

Janet Mokades

Jill Pullen

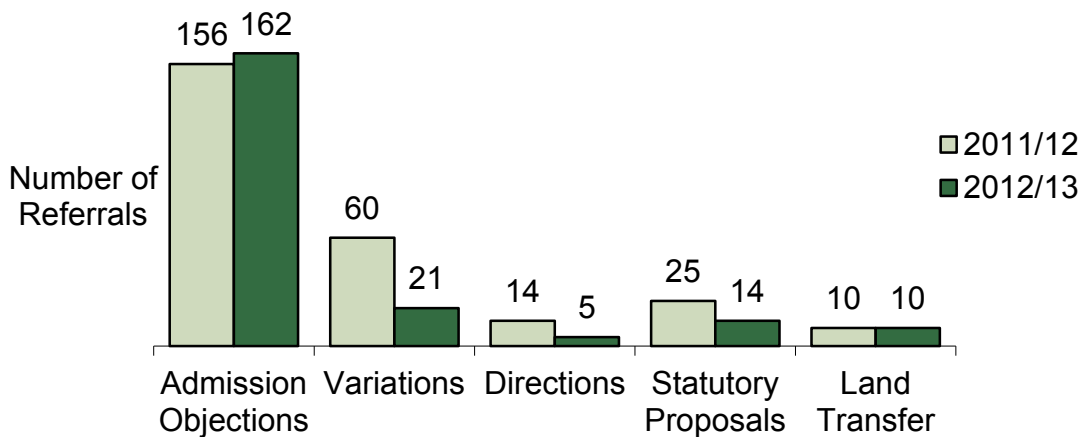
John Simpson (to 30 September 2012)

Shan Scott (from 15 April 2013)

32. The qualifications and backgrounds of all adjudicators' can be found on our website www.education.gov.uk/schoolsadjudicator. We display these on our website as one of the ways in which we ensure transparency.
33. Adjudicators, including the Chief Adjudicator, are part-time and are only paid for the time actually spent on cases and related work. Fee rates have remained the same since 2007, and all adjudicators work hard to keep travel and other costs down. *Appendix 2* shows the OSA's costs.
34. Adjudicators could not do their job without the support of administrative colleagues based in the DfE's Darlington office. The 5.8 full-time equivalent staff provide the link between those referring matters to the OSA and adjudicators who make the determinations. It is the Darlington team that respond to numerous requests for information from the large number of people who contact the OSA. I reported last year that as the work of the OSA continues to evolve I was concerned that the demands over the summer months could not always be met as we would wish. The careful look I said was necessary to find a way to have well-trained staff available when needed, but not be overstaffed during the quieter periods in the year has been met in part, but there is more to do before summer 2014.
35. The OSA does not employ full-time legal staff, but instead makes use of 'call-off' support from members of the Treasury Solicitor's Department (TSol). We seek advice as necessary to try to ensure that our determinations are legally sound. I am extremely grateful for the timely advice and support from all our TSol colleagues over the year and especially for ensuring cover over the summer period. There were no judicial reviews of our work during the year.
36. We received 11 requests for information under the Freedom of Information Act. They were responded to within the specified timescales, but consumed a significant amount of the team's time. We also received one formal complaint about the handling of a case.
37. Overall we dealt with 212 new cases this year compared with 265 last year. With almost 20,000 state-funded schools spread across 152 local authorities in England only a very small proportion of these schools have been part of cases referred to the OSA. I repeat what I said last year that for those schools, the parents, local

authorities and others who make up the interested parties to the referral, whatever the type of case, it is not the number of referrals that matters, but that there is an independent, impartial decision made in a timely manner about their particular concern.

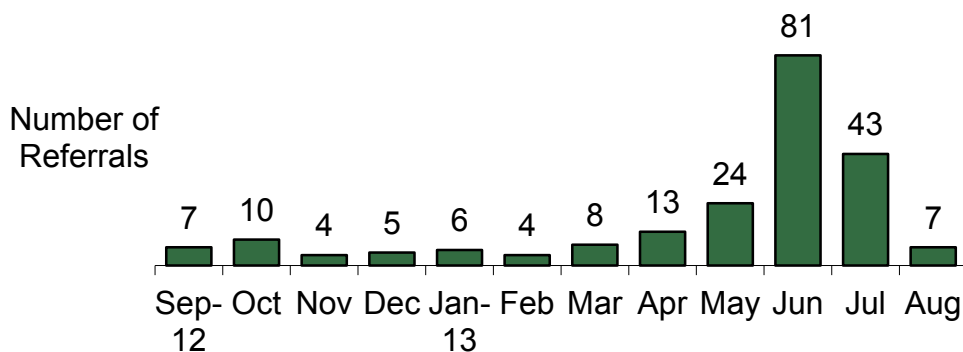
Figure 1: Referrals by type 2011/12 and 2012/13



38. Each year local authorities must submit a report to the adjudicator by 30 June. As part of their report they gave the number of types of schools in their area which showed that the local authority was the admission authority for 9,957 community and 2,282 voluntary controlled schools. The relevant body, usually the governing body, is the own admission authority for 7,562 schools, comprised of 3,781 voluntary aided; 935 foundation and 2,846 academies. The number of academy schools increased during the year as maintained schools converted to academy status and new academy schools, free schools, university technology colleges and studio schools opened. The total number of own admission authority schools increased from the approximately 6,700 reported last year to approximately 7,500 as recorded in the data provided by the local authorities in their reports to the OSA. Many of the academies were previously foundation or voluntary aided schools and as such were already their own admission authority, however there are just over 1,000 fewer community and voluntary controlled schools recorded in 2013. Some may have closed, for example infant and junior schools that opened as primary schools thus replacing two schools with one, others have acquired foundation status and most converted to academy status and together with new foundation schools have become their own admission authority for the first time.
39. Thirty three cases were carried over into this reporting year from the previous one and 52 were carried over into 2013/2014. The earlier date of 30 June introduced in 2012 by which objections to admission arrangements must be made to the OSA enabled investigations to begin before schools closed for the summer holiday. However, the OSA continued to receive admissions cases which merited

investigation as the arrangements had come to the attention of the adjudicator, as well as other types of cases, during July and August. The timing of receipt of these cases meant that investigation continued into the new school year. The spread of referrals received over the year shows how the work load varied in the last 12 months.

Figure 2: Spread of referrals month by month 2012/13



Admissions

Objections to and referrals about admission arrangements

40. During the year adjudicators have considered 189 objections to, and referrals about, admission arrangements. The total number of new cases reporting concerns about admission arrangements was 162, which related to 94 individual admission authorities and is a small change from the 156 cases (105 individual admission authorities) last year. There were 27 cases carried forward from the previous year, 145 cases were finalised and 44 cases carried over into September 2013. Of the determinations issued, in 46 the objections were fully upheld, 51 were partially upheld and in 20 cases the objections were not upheld. Of the remaining 28 cases 23 were out of jurisdiction and five were withdrawn.

arrangements. In some cases this resulted in a determination that required the admission authority to bring its arrangements into line with the Code.

42. Parents have complained that they were not aware that the arrangements against which they applied for a place had been changed from those they had known, perhaps when an older sibling was seeking a school place, or that the arrangements had been changed without proper consultation. Other objectors complained that they had been unable to find a school's admission arrangements on its website. Some of those objecting after 30 June said that the arrangements had not been available any earlier.
43. The Code sets clear requirements for the publication of admission arrangements. When adjudicators begin to investigate a case they usually look at the school's website and regrettably are frequently unable to find the admission arrangements displayed as required by paragraph 1.47 of the Code which says, "*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the academic year in which offers for places are made).*"
44. Local authorities usually have the admission arrangements for community and voluntary controlled schools published as required, but do not always show or indicate where the arrangements for own admission authority schools can be found. Some schools that are their own admission authority meet requirements fully. Typically the websites of such schools have a tab labelled "admissions" and they show the arrangements for the current admissions round and those that are determined by 15 April of that year for the following year. This would mean that anyone looking at the school's website after 15 April would have seen the arrangements for 2013 and those for 2014. If the school uses a supplementary information form that too must be included with the admission arrangements and if a secondary school has a sixth form those arrangements must also be published in full.
45. All too often anyone looking for admission arrangements has to guess where they may be hidden. If eventually they are located they often do not include the year to which they apply so parents are left not knowing whether these are the criteria that will apply for admission for their child in the following year. In some cases despite extensive searching of a school's website no relevant arrangements can be located. These schools are either inadvertently not complying with duties placed on them, or they do not take their duties seriously enough, or they have not understood their responsibilities, but whatever the reason they are denying parents and everyone else the opportunity to see their arrangements and object on time if the arrangements appear not to comply with admissions law and the Code. While schools that are their own admission authority have many

responsibilities placed on them, that status brings with it a duty to take the responsibilities seriously and with respect to admissions to comply with admissions law and the Code.

46. On consultation, the Code sets out clearly in paragraphs 1.42 to 1.45 when consultation on admission arrangements is required and who must be consulted. Admission arrangements cannot be changed without consultation except in very limited specified circumstances. It is the responsibility of the admission authority to ensure the requirements are met, especially that parents of children aged two to 18 are consulted. If an own admission authority school takes part in consultation carried out by the local authority, it is still for the school to be sure that the requirements of the Code are met. It is not sufficient to say that the arrangements were posted on the school's or another website, or parents of children at a school were given a letter as it is not just those parents but also the prospective parents for the following year, especially those who will be applying for a reception year or year 7 place the following year, who need to be alerted and consulted. Some admission authorities have communicated effectively with prospective parents by placing notices in places such as local health centres, playgroups and supermarkets.
47. Admission authorities are required to determine their arrangements every year by 15 April for admissions in the following year. A major issue to emerge this year has been the number of own admission authority schools, both new and old, that when an adjudicator begins to investigate the case are found not to have determined their arrangements as required by 15 April.
48. A further issue concerning the determination of admission arrangements is that although a local authority may, with the governing body's agreement, delegate responsibility to a community or voluntary controlled school for it to determine its own arrangements there is no provision for other maintained or academy schools to delegate responsibility to the local authority to determine their arrangements. It is particularly important when a school changes status to become an academy school that the correct procedures have been followed with respect to admission arrangements so that the school is not left without lawfully determined arrangements. Furthermore, a school cannot suddenly change its arrangements without following the requirements concerning consultation before determining its arrangements.
49. The relevant admission authority for an own admission authority school, be it the governing body or academy trust, needs to follow the Code carefully so that it consults on its proposed arrangements if necessary, determines its arrangements on time and then immediately publishes them. Adjudicators will always ask for evidence of when consultation on the arrangements last took place and when the arrangements were determined. It is important that the minutes of the meeting of

the relevant body indicate clearly that the arrangements were agreed or approved or confirmed or ratified or determined, so that whatever the word used, the minutes are clear that a formal decision was taken.

50. Not only **must** all admission authorities determine their admission arrangements every year by 15 April, they **must** then display them in full on their website. If this does not happen, by the time a local authority issues its composite prospectus by 12 September, parents and others have been deprived of the opportunity to look at admission arrangements and if they feel that they do not comply with the Code to make an objection that should result in any non-compliant arrangements being made compliant before the arrangements are used during the application for and allocation of places.
51. The issue reported last year of the continuing lack of compliance with the Code with respect to admission to school sixth forms remains an issue this year. Despite being raised in previous annual reports, there are still misunderstandings about and serious shortcomings in schools' admission arrangements. The arrangements are often difficult or even impossible to find on schools' websites; are incomplete; ask for details that are not permitted; and so on. The Code is clear that schools which admit students to their sixth forms must have an admission number (that is the number of places that will be allocated to students new to the school). Far too many schools seem to think that the Code does not apply to admissions into the sixth form. While schools are ready to take advantage of the permission in paragraph 2.6 of the Code that they "*can set academic entry criteria for their sixth forms, which **must** be the same for both external and internal places*", they do not meet the requirements that there must also be oversubscription criteria and the arrangements overall must be lawful. The school must not, for example, give priority according to the date the application was received, or require the applicant or applicant's current school to provide information that the Code does not permit such as about behaviour or attendance record, or ask for details of the applicant's aspirations on leaving school. The Code at paragraph 2.6 goes on to say, "*As stated in paragraph 1.9 m) above, any meetings held to discuss options and courses **must not** form part of the decision process on whether to offer a place.*"
52. Pupils attending a secondary school for those pupils aged 11 to 16 years who wish to continue their education at a school have no option other than to apply for a place at a different school that has a sixth form. They should be able to find out easily where there are places available and the criteria for entry. Schools with a sixth form that do not meet the requirements of the Code in relation to publication of their admission arrangements or comply with the mandatory requirements of the Code disadvantage pupils who are trying to make decisions about their continuing education.

53. Adjudicators have also noted that local authorities rarely comply fully with the requirement to include details about admissions to sixth forms in a composite prospectus. Paragraph 14 of schedule 2 to the School Information (England) Regulations 2008 makes clear that the determined admission arrangements for admission to a school above compulsory school age have to be provided in a composite prospectus.
54. Once again there have been objections concerning catchment areas, often associated with considerations about distance between the home and school or with priority for siblings. Concerns have arisen about admission to primary schools where in the past all children in an area have had priority for a catchment area school and there has been sufficient flexibility to gain a place at an out of catchment school if preferred. However, an increase in the number of children may mean that such flexibility and choice may not be possible in future. This is especially the case where priority is also afforded to siblings. Where a primary school, for example, becomes its own admission authority and then decides to give priority to all siblings whether living in or out of the catchment, there is a danger that first born or children new to the area will not gain a place at the school, their catchment school, nor will they have priority for any other catchment area school. Those who benefit from priority for more than one school are content; those without priority for any school understandably find the arrangements of their catchment area or nearest school unfair.
55. Objections concerning priority for siblings also relate to younger siblings retaining priority for a popular and oversubscribed school when a family moves a significant distance away from the school resulting in those new to the area, or first born children being unable to have a place because siblings, wherever they live, retain priority. The advantages for one family of keeping siblings at the same, popular school lead to disadvantages for other families who, in the worst case scenario, end up with children in different schools, while those from further away have their highest preference met and attend the same school.
56. A continuing issue that emerged last year concerns siblings where primary schools have taken necessary action in recent years to provide extra reception year places and the admission arrangements for those schools give high priority in their oversubscription criteria to siblings. In many cases an additional form of entry is made available for one or two years and these classes progress through the school as a “bulge” cohort while the number joining reception reverts to the previous lower admission number. The overall effect in some schools is that the priority for siblings has reduced the number of places available for children living near the school who do not have an older sibling already attending the school. Solving the need to provide extra places for some children has created a problem for other children.

57. There is no easy solution to any of the sibling related objections. Some schools try to achieve a degree of fairness by linking sibling and catchment for priority, others uncouple sibling and catchment and give priority on distance from home to the school only. When a school is popular and oversubscribed there will always be parents who are disappointed when they are not allocated a place for their child, but as set out in paragraph 12 of the Code, *its purpose is to ensure that all school places for maintained schools and academies are allocated and offered in an open and fair way.*
58. After a few objections last year concerning priority for a reception year place for children who attend particular nursery provision, there have been over 20 this year. All the objections were upheld. Unlike the previous Code which set out terms which if met could permit some priority for attending certain types of nursery provision, the current Code is silent on priority for admission to the reception year for attending named nursery provision. Silence means neither permission nor prohibition, but does mean that the arrangements must therefore be tested against the general requirements of the Code. The arrangements were found to be unfair or not compliant with other specific parts of the Code for different reasons, which include the following examples.
- a. The number of places in a school's nursery class, with or without taking into account other criteria such as priority for siblings, meant that unless the child attended the nursery class s/he would not or would be extremely unlikely to be allocated a place in the reception class.
 - b. Admission to the nursery was on the basis of arrangements that would not be lawful if used for admission to the reception year and therefore it was unfair that a child gained a place in the reception year at the beginning of compulsory schooling because, for example, the child had entered the nursery on a first come first served basis or a fee was payable to register to be considered for a place in the nursery.
59. Adjudicators considered each case in the circumstance of the school and the named nursery provision, but found that the arrangements giving priority for attending the nursery did not comply with the Code.
60. Another matter concerning admission to primary schools this year has involved schools refusing to provide a full-time reception place from the September after the child's fourth birthday. The Code at paragraph 2.16 makes clear that it is for the parents to decide whether a child attends school prior to reaching compulsory school age and if so, whether they attend full or part-time. Schools must make full-time provision available from the beginning of the autumn term of the school year in which the child reaches compulsory school age. It appears that some schools have increasingly provided an induction period such that schools dictate the sessions for which children can and cannot attend school, including setting

requirements that contravene a parent's right to full or part-time or deferred schooling. This is not acceptable.

61. Another concern for adjudicators has been the complexity of some admission arrangements. Some secondary schools have determined arrangements that are complicated and require a parent to be well organised and study the arrangements carefully, sometimes several years before applying for a place, to ensure that their child will have a realistic chance of gaining a place at the school. For popular schools that require children to sit tests whether for banding purposes or for places allocated for aptitude or for some selective places the first essential is to take the test. This may mean taking a different test on more than one Saturday if the schools being considered as preferences are unlike those authorities where one test is used by all the selective schools. There is also a danger that as the arrangements using banding become more complicated the highest priority for looked after and previously looked after children may be lost in the many factors being taken into account. In addition to banding, for example, there may also be different catchment areas, or feeder schools to take into account as well as faith criteria to be met if the school is one designated as having a religious character. The complex arrangements, especially some with points systems, risk falling far short of meeting paragraph 14 of the Code which says, *"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."*
62. For schools designated as having a religious character, the relevant faith body has an important role in ensuring that the guidance it gives about admissions and especially the oversubscription criteria takes account of the requirements set out in the Code currently in force.
63. One of the amendments to the School Standards and Framework Act 1998 by the Education Act 2011 increased the range of people and bodies who can object to admission arrangements so that any person or body can object. Referrals have been made again this year by national bodies and by members of the public that would not have been accepted under the last Code. Regulations require that the name and address of an objector are known to the adjudicator. This has meant that some objectors have requested that their name should not be made known to the admission authority or other parties. While this is perhaps understandable in the case of a parent objecting to the arrangements of a local school, we are concerned that anyone else should wish to remain anonymous. Objectors do not have to give a reason why they are making an objection, only what it is about the arrangements that they believe contravenes the Code. As an adjudicator investigates a case s/he is sometimes left wondering why someone with no apparent connection with a school should be objecting to the admission arrangements.

64. On a positive note, the requirement in the 2012 Code to give equal highest priority in oversubscription criteria to both looked after children and the new group of previously looked after children has been met in most of the arrangements seen by adjudicators. This is a major success after the considerable time it took to ensure admission authorities gave highest priority to looked after children when that requirement was first introduced. There is still work to be done, however, to ensure that the arrangements for all schools are fully compliant. Some schools give looked after children as the first oversubscription criterion and refer the reader to a note to be found later in the arrangements which then says something about including previously looked after children. This is not acceptable. A further concern is that the definitions of a looked after child and of a previously looked after child are not always accurate. Arrangements must be clear and accurate. The first oversubscription criterion must be looked after and previously looked after children and then it is up to the admission authority to include relevant, accurate definitions at that point or in a clear, later note.

Variations to determined admission arrangements of maintained schools

65. During the year adjudicators have considered 21 new requests for a variation to an admission authority's determined admission arrangements, a significant reduction, as predicted, on the 60 cases received the previous year. This reduction was greater than the reduction from 73 to 60 from 2010/11 to 2011/2012. Four cases have been carried over into 2013/14 compared with three in the previous year. Of the 20 completed cases, 15 variations were approved; one rejected, two were out of jurisdiction and two were withdrawn.
66. Determined admission arrangements can only be varied, changed, in limited, specified circumstances if an admission authority considers there has been a major change in circumstances that necessitates a change. The Code sets out the circumstances in which an admission authority may itself vary its arrangements, for example, to comply with a mandatory requirement of the Code. Other matters must be referred to the Adjudicator.
67. For an academy school a request for a variation must be made to the EFA to decide on behalf of the Secretary of State. Following concerns raised about the anomaly of an adjudicator considering objections for all types of schools, but variations to determined arrangements for maintained schools being dealt with by an adjudicator and those for an academy by the EFA it was agreed during the year that the EFA would seek the views of an adjudicator if thought appropriate. This situation has not arisen, but the uncertainty about who does what has been evident in enquiries to the OSA about making a variation for academy schools. The number of variations requested for maintained schools is small and it may be that the number for academy schools is similarly small.

68. The one change to matters for which a variation is no longer required, namely to increase the published admission number (PAN), accounts for the significant reduction in the number of requests for a variation. Over recent years as local authorities have taken action to provide additional places to meet the need for ever more places in reception classes they have even made requests for increases to schools' PANs once the applications for the next year have been made. As expected requests for these types of variations ceased for admissions in September 2013 as the dispensation for admission authorities to increase their PAN came into effect.
69. The variations this year have covered circumstances such as changes to catchment areas and to named feeder schools. A type of variation referred for the first time concerned action needed as a result of a voluntary aided school requesting and being granted the power to innovate by including in its oversubscription criteria priority for children in receipt of the pupil premium. The Code at paragraph 1.9 f) prohibits giving priority for admission to children according to the financial status of parents and therefore schools are not permitted to give priority to children in receipt of the pupil premium. Permission can, however, be made available to academy schools through their funding agreement with the Secretary of State to give priority to children in receipt of the pupil premium. For the voluntary aided school, once the Order to grant the power to innovate had been laid before Parliament and came into force, the admission authority had either to wait to implement it until determining its arrangements for 2015 or seek a variation so that the new power could take effect for admissions in 2014. The variation was considered and approved for admissions in 2014.
70. As reported last year a continuing issue has been that although admission authorities do not have to consult on a proposed variation they do have to notify the relevant bodies. It is sometimes difficult to find evidence that this requirement has been met. It is important that other bodies at least have the opportunity to comment if they wish. If the variation is approved, the admission authority must fulfil the further requirement of ensuring that all interested parties can see the varied arrangements.

Directions to maintained schools to admit children

71. Under Sections 96 and 97 of the School Standards and Framework Act 1998, in certain circumstances, the admission authority for a maintained school may appeal to the Schools Adjudicator if notified by a local authority of its intention to direct the school to admit a pupil and the admission authority does not wish to do so. If a local authority considers that an academy school would be the appropriate school for a child without a school place and the academy school does not wish to admit the child, the local authority may make a request to the EFA to direct, on behalf of the Secretary of State, that the academy school admits the child.

72. During the period covered by this report the OSA received three new referrals and two requests from the EFA for advice about referrals it had received. All cases were resolved during the year.
73. Of the three cases, one was withdrawn, one was out of jurisdiction and in the third the adjudicator did not uphold the appeal and gave the local authority permission to direct the admission of the child. In the advice provided to the EFA in one case the adjudicator recommended that the school should be required to admit the child and in the other that the appeal should be accepted and a different school be asked or required to admit the child.
74. Paragraphs 3.16 to 3.21 of the Code set out the procedures to be followed when the local authority intends to direct a school to admit a child and provide references to the relevant parts of the School Standards and Framework Act 1998. Difficulties continue to arise when the local authority moves from being unable to place a child through the fair access protocol route to issuing a notice of intention to direct without meeting the terms of section 96(1) of the Act that, “... *either (or both) of the following conditions is satisfied in relation to each school which is a reasonable distance from his home and provides suitable education, that is – (a) he has been refused admission to the school, or (b) he is permanently excluded from the school.*” Failure to comply with the Act results in a child being out of school for longer than would otherwise have been necessary if the conditions had been met.
75. From conversations with delegates at conferences that consider the requirements for admissions, including making a direction, it remains evident that not all local authorities fully understand the requirements of the Act. It has also been apparent that admission authorities sometimes do not understand that the time allowed for making an appeal, 15 days, or seven days in the case of a looked after child, are consecutive days and do not take into account weekends and holidays.
76. Last year I tried to establish how often a direction takes place without recourse by the admission authority to the adjudicator. As part of the information requested in the annual reports from local authorities each authority was asked how many children had been placed in a school as the result of a direction. This information has been gathered again for 2012/2013.
77. From the 151 responding local authorities, and for all types of schools, five children of primary school age and 21 of secondary school age, down from 16 and 69 respectively last year, were admitted to a school as the result of the school being directed to admit the child. A direction is the process of last resort for obtaining a school place for a child and it is a very encouraging to find that fewer children than ever who do not have a school place have had to be found one through this process. The earlier steps of in-year admissions or if necessary the

fair access protocol provisions have worked to good effect to provide places for children without a school place.

Statutory proposals

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

78. During 2012/13 the number of statutory proposals referred to the OSA continued the downward trend and fell to 14 compared with 25 and 34 referrals respectively in 2011/2012 and 2010/2011. As noted previously, this reduction was anticipated as the adjudicator has jurisdiction for maintained schools but not for academy schools. There were two cases carried forward from 2011/12 and of the 11 decisions issued nine proposals were approved and two were rejected. Two proposals were withdrawn and two were out of the adjudicator's jurisdiction. One case has been carried forward to 2013/14.
79. The adjudicator is the decision maker for proposals to discontinue community infant and junior schools and to establish community primary schools, often called amalgamations. We also become the decision maker where the local authority is designated as first decision maker and has made a decision within the statutory period, but the governing body appeals against the decision by asking the local authority to refer the case to the adjudicator. In the two such cases received the adjudicator rejected the appeal.
80. Two cases concerning a change of category from community to foundation with foundation status were referred by the local authority. On investigation they were found to be out of jurisdiction as the required consultation had not been completed properly by the governing bodies and thus the governors' decision to change the status of the schools was not properly made and the change could not take place. The important lesson from these cases is that parents and others must be given accurate information about plans to make a change to a school's status and their views must be considered.
81. A rare case of a request for approval for a revocation of a statutory proposal was received by the OSA. Over recent years there have been just a few instances where, as in this case, the anticipated need for a new school has altered and the sensible decision has been made to halt one proposal so as to be able to initiate a new one when the circumstances change again and merit a new, possibly different, proposal.

Land transfers for maintained schools

82. Ever since land transfer disputes became part of the remit of the adjudicator through the Education and Inspections Act 2006 they have been a small part of the OSA's work. One case was carried forward from 2011/2012 and 10 new referrals were received. Two cases were withdrawn, two were found to be out of jurisdiction, four determinations were issued and three cases remain to be resolved.
83. Although the transfer of land takes place by operation of law when a community school becomes a foundation school, if there is no agreement as to which land should transfer within six months of the change of status occurring either party may apply to the adjudicator for a direction to resolve the disagreement. Some cases may be withdrawn because the parties come to an agreement once an adjudicator is involved. The two cases found to be outside the adjudicator's jurisdiction concerned academy schools. One case, as last year, was referred to the OSA when it was not clear who could or should deal with the issue. All the parties agreed that an adjudicator could make a legally binding decision on the matters about which there was no dispute, but the parties needed to have someone who was independent to make and publish the decision.
84. It seems likely that in future the number of cases will remain small and will continue to present adjudicators with unusual and unexpected circumstances about which to make a decision.

Other issues

85. The second year of a new Code often results in objections about admission arrangements where there has been a change in the requirements to be met by an admission authority. This year has followed that pattern. Where a decision one year can appear to contradict or not be entirely consistent with an earlier decision it may be necessary to remind complainants about the way an adjudicator must consider each case and must assess arrangements and objections against the Code that is currently in force. All team members have worked hard through training and then later with discussion about completed cases at our bi-monthly meetings to try to ensure we all have a thorough understanding of the relevant legislation and apply it consistently. It continues to be our aim that any apparent lack of consistency from case to case or year to year is accounted for by differences in the circumstances of the schools or changes in legal framework and not by unsatisfactory decision making.
86. We invite feedback from parties when a case has been completed. We know we are unlikely to please everyone by our decisions since the very nature of our work is to resolve disputes which means we are almost always involved only when there

is a disagreement that cannot be resolved locally. Where the feedback form indicates dissatisfaction with the way we have handled a case we try to learn from what has been the cause of the discontent to ensure that it is not repeated. Over the year we have received one complaint about our handling of a case (we received four complaints last year).

87. Once again we have not had any judicial review proceedings issued against the OSA. The whole team tries to ensure that we work carefully, thoroughly and stay within our remit. We have always held the view that a judicial review, even if the decision is in favour of the adjudicator, is not in anyone's interest as it takes a high cost in terms of time, public expenditure and reputation. With the combined efforts of the team and assistance from TSol we aim to continue to publish determinations that are legally sound and whether liked or not are accepted by all the parties to a case.

Summary of Local Authority Reports 2013

88. Section 88P of the School Standards and Framework Act 1998 requires all local authorities in England to, “... *make such reports to the adjudicator about such matters connected with relevant school admissions as may be required by the code for school admissions.*” Paragraph 3.23 of the Code sets out that, “*Local authorities **must** produce an annual report on admissions for all the schools in their area for which they co-ordinate admissions, to be published locally and sent to the Adjudicator by **30 June** following the admissions round.*” The Code also sets out in the same paragraph what must be included as a minimum and these matters are summarised below.
89. Local authorities are invited to complete a template that covers the matters the Code specifies must be included in their reports. As previously I have taken the opportunity to seek additional information to enable me to write on issues I think it would be useful to be able include in this report to the Secretary of State for Education.
90. After the success of last year in receiving a report from all 152 local authorities, the London Borough of Lambeth, despite repeated reminders, failed as in 2011, to meet the requirement in the Act to report to the adjudicator. This year 132 local authorities compared with 120 last year and 88 in 2011 met the requirement to submit their report on time. With reminders from OSA officials 150 had been received by 31 July and one was received on 14 August. This continuing improvement in timely compliance is greatly welcomed.
91. The 2012 Code introduced a new requirement for local authorities to publish their report locally. Many local authorities show clearly on their website where the report can be found. I invited local authorities to say where and how a copy of their report could be obtained by a member of the public. All 151 said they would publish their report; 144 said it would be published on their website; five were only making a hard copy available; and 50 said that in addition to being on the website it would be available in hard copy or by email. The remaining two did not indicate a publication method. On those occasions when I have had cause to search a local authority’s website for some admission arrangements I have been encouraged by often seeing a link to the report to the Adjudicator.
92. This summary of the reports is no more and no less than a summary of what local authorities say is happening in their area. They write about the matters specified by the Code and they are invited to include other matters if they wish. There are some matters where what they say is very much as adjudicators have found when dealing with objections about admission arrangements. There are other matters, such as appeals, about which the OSA has no first hand evidence as appeals are outside the OSA’s remit. The requirement for the OSA is to summarise what local

authorities report and not to undertake exercises to gather evidence itself to corroborate the findings.

Specific groups

93. The Code requires local authorities to provide information about how admission arrangements for schools in their areas serve the interests of: **looked after children and previously looked after children; children with disabilities; and children with special educational needs, including any details where problems have arisen.**

Looked after children and previously looked after children

94. All local authorities report that, as required by the Code, looked after children and previously looked after children are given the highest priority in the oversubscription criteria for admission to schools in their area. One exception is recorded which refers to a city technology college that is not bound by the Code and does not give priority to either looked after or previously looked after children.
95. This is the first year for which the requirement introduced in the 2012 Code relating to previously looked after children applies for admission to schools. Initially there was some uncertainty about the definition of who qualifies as a previously looked after child. Local authorities seem now to have a sound understanding, but not all own admission authorities do as yet. A few local authorities report instances of individual parents either not fully understanding or not accepting the limits of the designation of previously looked after. An occasional difficulty has been establishing the status of a child so relevant documents had to be assembled in order to make a fair, valid decision about an application.
96. Local authorities say they have amended their common application forms to try to ensure parents can record that a child qualifies as a previously looked after child, but some parents are reluctant to indicate the child's status, for example, because they do not feel certain that confidentiality can be maintained and the child does not know that s/he has been adopted. A further concern, again related to confidentiality, is how the parents respond if the child has a place at an oversubscribed school and other parents query how the child managed to gain a place at that school. Although these examples of reluctance to seek priority for admission for a previously looked after child do not indicate a widespread avoidance of using the opportunity for priority for admission, local authorities will no doubt monitor carefully the use of the criterion and report any continuing concerns. Overall, the comments are positive and it seems that the newly introduced priority for admission for previously looked after children is working well to give the children the priority the Code intends them to have.

97. The priority for admission for looked after children is now well established and some local authorities have highlighted the good work being done through liaison between the admission team and social workers and others with responsibilities for this group of children. The effective liaison between adults also ensures that looked after children who need a place outside the normal admissions round are found a place as quickly as possible.
98. As last year a very small number of local authorities refer to difficulties in placing and monitoring children who have been accommodated in their local area having been placed there by other local authorities. The same difficulties remain as previously and include having insufficient information about the child to decide which school would be the most appropriate. This delays the admission of the child while additional information is obtained. There are also problems with high numbers of children being placed in certain areas of an authority which can cause difficulties in finding sufficient suitable places.
99. Once more there are references to some schools designated as having a religious character giving priority, as permitted by the Code, to looked after, previously looked after and all children of that faith before other looked after and previously looked after children. This can mean that there are schools, often popular, good schools, where it is impossible for a looked after or previously looked after child other than of the faith to be admitted.

Children with disabilities

100. The majority of local authorities report as part of their admission arrangements for community and voluntary controlled schools and the arrangements of varying numbers of own admission authority schools, that they include exceptional social or medical or physical conditions as an oversubscription criterion. There is usually a clear requirement that the application must be supported by evidence from a relevant professional and the reason why the child should have a place at the particular school rather than any other school must be included. There are a few references to schools that have become their own admission authority dropping the local authority's social, medical, special circumstances criterion. As yet there is no immediate evidence of the particular impact of such action, but no doubt local authorities will monitor whether there are children who are disadvantaged by this change in oversubscription criteria.
101. As last year some local authorities reported the action taken in their area to ensure that certain schools are, for example, fully accessible for children. Again, there are references to close working between different teams at the authority to ensure children with disabilities have a place at a suitable school.
102. While many admission arrangements include priority for a child who has exceptional social or medical needs, the OSA has been made aware of instances

this year where the young child does not have the exceptional need, but a parent has particular needs. Some local authority admission arrangements would enable such a need, for example for a young carer, to be taken into account, but it seems that there are situations where this is not the case. It might be reasonable for consideration to be given not only to a child's but also a parent's difficulties.

Children who have special educational needs

103. For children who have a statement of special educational need that names a school, there are usually no problems in ensuring admission authorities comply with the legal requirement to admit such a child. There remain instances, however, where own admission authority schools do not seem to have understood the process fully and have been reluctant to admit a child with a statement naming the school. A school in this situation does not have the option to refuse or try to refuse to admit the child to the school.
104. Those children who have a special need, but do not have a statement, may be admitted to a school under a social or medical criterion, or there may be a very occasional use of a fair access protocol process. A few authorities make reference to involving staff from the special needs team as necessary to assist in placing children. Overall local authorities describe a fairly positive situation when considering the admission of children with special needs to a suitable school; however there remain occasional references to some schools being thought to discourage parents from seeking a place at their school. The emphasis remains on the effective work that local authorities do to ensure all children with special needs are admitted to a suitable school as quickly as possible.

Fair Access Protocols

105. As expected, again this year the vast majority of local authorities (146) confirmed that they had a Fair Access Protocol (the protocol) agreed with the majority of their schools. Two authorities did not have a protocol, but this is because they each have only one school. One of these has a draft protocol that it will use from September 2013. Another authority is working towards having a revised protocol in place for the new school year and two do not have a protocol with primary schools, but have processes they follow to place children in schools.
106. Almost all local authorities have agreed their protocol with all their schools. The data show the protocol has not been agreed with 103 out of 16,625 primary schools and 14 out of 3,176 secondary schools. Very few schools have formally refused to agree the protocol. It is a matter of concern, however, that in the words of one authority the governors of "an outstanding, oversubscribed school are concerned that the demand for places may be high". This seems to indicate that the school does not want to take a responsible part in accepting at least some

children via the protocol. All schools, whether they have agreed the protocol or not are bound by the protocol that applies in their authority.

107. Local authorities were asked to assess how well the protocol has worked during the year in placing children without a school place in a school in a timely manner and to give the number of children placed using the protocol.
108. Data from the reports show the total number of children admitted to a school using the protocol and the number refused a place.

Table 2: Use of Fair access protocol

	Primary	Secondary	Total
Admitted via the protocol	7,874	8,531	16,405
Refused admission	86	539	625
Admitted via a direction	5	21	26

109. Last year it was difficult to assess the effectiveness of using the protocol from the data alone as I had no indication of the total number of children who need a school place outside the normal admissions round. A small number of the 2012 reports noted the number of such children. To try to obtain a little data to give context to the extent of the use of a protocol we gathered data from a small sample of local authorities covering rural, urban, unitary, metropolitan and London Borough areas which when extrapolated to all 152 local authorities suggested over 500,000 pupils may have needed a place through the in-year admission arrangements co-ordinated by local authorities. This year all local authorities were asked for and 143 provided data on the number of in-year admissions to 30 June. The data show 277,955 primary places and 114,507 secondary places were allocated. Of these less than 2.8 per cent of primary aged pupils and 7.5 per cent of secondary aged pupils had to be found a place through the protocol, and just 0.002 per cent of primary pupils and 0.02 per cent of secondary pupils were found a place through a direction to admit. (The data from 143 local authorities this year of 392,462 places needed in year, if extrapolated as in 2012 would mean that 417,162 places have been required.)
110. The data strongly suggest the protocols are working well and this is borne out in the comments from local authorities. The majority of comments refer to the protocol working well and some include notes about features that are said to contribute towards the efficient and effective working of the protocol. One

authority says schools admit children with challenging educational needs on a rota system, depending on clearly recognised availability of places. Another refers to the particular demands on schools of admitting pupils to years 10 and 11 and having a special procedure for pupils in these year groups. The report from another authority refers to having a range of provision for key stage 4 pupils for whom a mainstream place is not suitable. Some authorities referred to having time limits and keeping records that particularly help with checking that all pupils are admitted to a school as quickly as possible.

111. Despite much good work, local authorities report that not all schools are co-operative. There are comments about examples of ways in which some schools try to avoid admitting certain children such as poor attendees and others that simply try not to engage in the process or use delaying tactics or think the process does not apply to them. One local authority expressed concern that some local schools had pursued plans to reduce their admission number which was considered to be a way of avoiding taking pupils as in-year admissions.
112. Several local authorities refer to a small minority of schools that in their view unreasonably refuse to co-operate. In an authority where all the secondary schools are their own admission authority, these schools have refused to co-operate with the protocol. With the assistance of the EFA work has been undertaken to try to resolve the difficulties that have arisen.
113. There are significant difficulties in some areas in providing sufficient primary places and accommodating children in year when infant class sizes legislation has to be taken into account.
114. A number of authorities referred to the guidance issued by the DfE in November 2012 saying they had found it helpful in clarifying what can be done to provide a place for a child. A very few authorities suggest there is still a need for further guidance and clarification about compliance with protocols. Queries include, for example, when a parent has a right to an appeal and when that right no longer exists.
115. Overall, as part of the arrangements for in-year admissions to schools the protocols are working well.

Effectiveness of co-ordination

116. Local authorities were asked to assess the effectiveness of co-ordination of primary and secondary admissions for September 2013. The vast majority reported that in their view the co-ordination of the process for admissions to both primary and secondary schools had once again worked well.
117. Several local authorities referred to improvements in the co-ordination of admission to primary schools and a few said they had pre-empted the required introduction of a national offer day for primary schools and this had worked well. Although local authorities report elsewhere on the proportions of applicants being allocated their highest preference school, some authorities included this information in their annual report. Generally the reported percentages are very high which some authorities suggest is in part due to an increase in the number of preferences parents in their area can express. Other authorities reported fewer late applications this year which also meant more applicants were allocated one of their preferred schools.
118. Difficulties have remained where: some own admission authorities did not meet deadlines for ranking applications and returning information to the local authority or did not rank correctly in accordance with the oversubscription criteria; applications were not properly notified to neighbouring local authorities or information not exchanged between authorities on time; and isolated instances of a school contacting parents about offering a place prior to the national offer day. Several authorities have reported that some own admission authority schools, particularly those who have become the admission authority for the first time, have needed considerable assistance to complete their role in the co-ordination process.
119. A very small number of authorities referred to difficulties over the opening of a free school and the school making offers to parents as is permitted in the first year, as well as the parents applying through the co-ordinated scheme, so the child received two offers of a place. As a consequence some other children were offered a place through the co-ordinated scheme that was not their highest preference only for places at their preferred school to become available later. There were fewer concerns where from its first year the free school took part in the co-ordination of applications and offering places.
120. A continuing concern for some local authorities is that although the initial allocation of places goes smoothly, there are difficulties in making further offers as places become available. Some authorities work closely with neighbouring authorities, but others do not do so.

121. Fewer authorities referred to problems over late applications, but there is still a desire to have some national publicity about closing dates for applications. A particular feature recorded this year where things have worked well is the speedier placement of children where the authority has a target time for admission, in some instances within 10 days and in others between 10 and 20 days.
122. From September 2013 local authorities are no longer required to co-ordinate in-year admissions. I asked authorities whether they had discussed with schools in their area whether the authority would give schools the option of continuing to provide in-year co-ordination and if yes, would the authority co-ordinate for all schools and if not all, how many schools would manage their own in-year admissions? The response from 151 local authorities was that 137 had discussed continuing to co-ordinate in-year admissions and 64 will continue to co-ordinate all such admissions. The other 87 authorities will co-ordinate for some or for the majority of schools, or will not co-ordinate for any.
123. There is still a requirement in paragraph 2.21 of the Code for local authorities to publish in the composite prospectus how in-year applications can be made. It will be essential for schools that are managing their own in-year admissions to comply with the requirements in paragraph 2.22 of the Code concerning keeping the local authority properly informed and in telling parents of their right to appeal if they are told that there is no place for their child.

Admission appeals

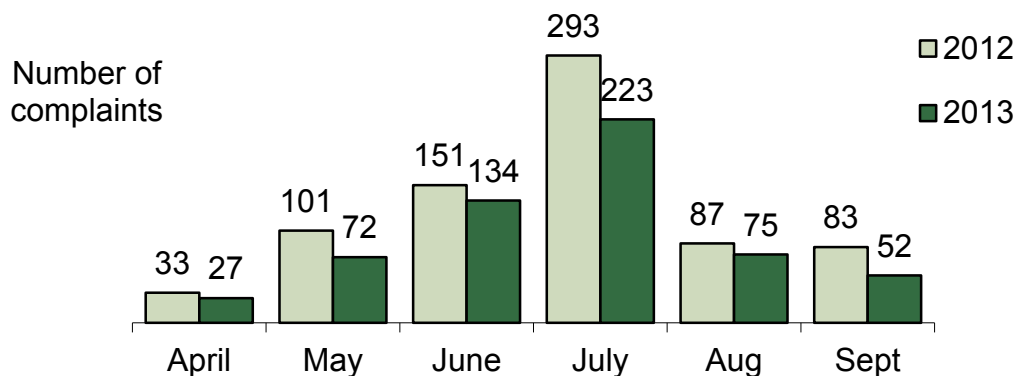
124. The requirement for information about appeals was reduced last year and a new aspect was introduced giving authorities the opportunity to update the information concerning appeals by 31 August. This change was in response to authorities in the past saying that the data at 30 June tell just a small part of the story. We have received updated data from 68 authorities. In response to comments last year data have been collected in a slightly different way to reflect more closely how the appeals process varies over time.
125. The number of appeals and outcomes reported to the OSA show the position as local authorities were able to confirm, at the time they submitted their data, as there were still cases to be resolved.

Table 3: Appeals lodged following the offer of places for September 2013

	Lodged	Settled	Withdrawn	Heard	Upheld	Not Upheld
Primary	23,853	4,511	3,501	12,486	2,527	9,495
Secondary	18,025	2,984	2,056	12,744	3,614	9,009
Over 16	78	1	1	6	1	5
Total	41,956	7,496	5,558	25,236	6,142	18,509

126. Given the times at which the data were collected and that some but not all local authorities provided updated information, the data can only be used to give an indication of the level of appeals, the number that reach the hearing stage and the general level of success of appeals. Of the total number of children requiring a school place relatively few who are dissatisfied with the place they are offered lodge an appeal and of those whose appeals are heard only about one in five primary and one in three secondary appeals are upheld.
127. There was also provision for authorities to add comments if they wished. The concerns raised include what are thought to be misunderstandings by appeals panels, for example about infant class sizes regulations. Occasionally there were references to poor quality appeals processes by some academy schools and the understanding of some panels of what is and what is not lawful in admission arrangements.
128. For those who believe the appeals process has not been conducted properly there is the option of making a complaint to the Local Government Ombudsman (LGO) if it concerns a maintained school or the EFA if an academy school. The LGO and EFA have kindly provided data on the number, types and outcome of complaints they have received. The information is presented as reported by the two bodies.

Figure 3: LGO – School admission appeals complaints (maintained schools)



129. The peak in the work of the LGO on complaints follows offers of places for the new school year. The LGO has received fewer complaints (583) in 2013 compared with the same period (748) in 2012. The LGO suggests a likely cause of the fall is thought to be that complaints about academy schools are now outside the LGO’s jurisdiction and over 1,000 new academies were formed in the last year. This seems to be borne out by the data below from the EFA.

130. On receipt of a complaint it is assessed as to whether it should be investigated. Of the 583 complaints received 404 were passed to the investigation team. Of the 296 complaints investigated and completed:

- a. maladministration and injustice were found in 39 cases of which just under two thirds related to primary schools and just over one third to secondary schools;
- b. maladministration and no injustice were found in 26 cases;
- c. no maladministration was found in 195 cases;
- d. 14 cases were logged as “other” with no worthwhile outcome by continuing the investigation;
- e. 14 were discontinued because the complainant asked not to proceed;
- f. injustice was remedied during the investigation in 7 cases;
- g. Court proceedings were issued in 1 case; and
- h. 108 cases are on-going investigations.

131. Of the 296 completed investigations maladministration has been found in 22 per cent of the cases.

132. The EFA also received most complaints over the summer months. Of the 272 complaints received 168 were assessed as “in scope” and therefore could be considered by the EFA. Of those designated “out of scope” the complaint concerned the decision of the appeal and not the process. The EFA cannot substitute its judgement for the decision of the panel.

133. The findings for 2012 and 2013 are reported as below.

Table 4: EFA: School admission appeals complaints (academy schools)

	2013	2012
Complaints received	272	163
Complaints “out of scope”	90	33
Complaints still pending	14	0
Complaints considered “in scope”	168	130
Of which; complaints upheld:	27	23
• Maladministration - did not cause injustice therefore no new appeal	21	7
• Maladministration - did cause injustice therefore new appeal	6	16
Complaints not upheld	58	73
Complaints withdrawn	20	13
Complaints still live at end of August	63	21

134. From the information provided by the local authorities, LGO and EFA it appears that of the number of places allocated during the normal admissions round few parents who are not offered their most preferred place for their child appeal and of those who are dissatisfied and complain to the LGO and EFA few instances of maladministration have been found. Even fewer cases have been found where there has been injustice as a result of maladministration. Nevertheless, for the individual families affected it is regrettable that there are any cases of maladministration

Other issues - from local authorities

135. The Code makes provision for local authorities to comment on any issues in their area that they wish to raise. Three matters have been referred to more than any others:
- a. the continuing need for more primary school places with an occasional reference to planning for and difficulties in finding additional secondary places;
 - b. concern about the process of what happens when a free school opens; and
 - c. anxiety about possible problems when schools deal with in-year admissions, in particular whether the process will be applied correctly and fairly.
136. As last year, the majority of local authorities that included specific issues cited the continuing difficulty in providing additional places in primary schools. This is not limited to a single geographical area, but the extent of the difficulties in creating places has been greater in some urban areas than others. This year rather than referring to how many extra classes have been generated for the reception year; some authorities have indicated that thousands of primary places have had to be provided across year groups in recent years.
137. Where local authorities have been faced with increases in primary places every year for several years, some are becoming anxious about providing extra places in secondary schools when these large primary cohorts reach secondary school age. I note that the local authority as the admission authority for community and voluntary controlled schools is responsible for places in just over two thirds of primary schools and therefore has a considerable degree of influence and control in providing additional places in these schools. However, at secondary level the local authority is admission authority for fewer than one third of schools. To find the additional places will require negotiation with own admission authority schools. Where schools do not wish to increase their admission number the 2012 Code removed the power for anyone to object to the admission number of an own admission authority school if it determines the same admission number. It must be hoped that all schools will work constructively with their local authority to provide additional places as they are needed.
138. Several authorities referred under “other issues” as well as under “co-ordination” to difficulties when there is uncertainty about whether a new free school will open, the location in which it will open and problems with double offers. As noted above it appears that there are fewer problems where the free school and local authority

work closely together and the free school takes part in the co-ordinated process from the school's inception.

139. The third issue is perhaps more correctly described as an anxiety about what may happen when the local authority no longer co-ordinates in-year admissions. Some of the concerns have already been covered above. Two aspects that worry local authorities are keeping track of pupils as a matter of safeguarding responsibilities and schools "cherry picking" pupils from among those who approach the school rather than applying admission criteria impartially. It is to be hoped that these worries are not realised and that children will find a place in-year as quickly as last year and that they will be out of school for the shortest time possible.
140. Several other issues were mentioned by one or very few local authorities, but these related mostly to particular local circumstances. The most common concern was about schools that are their own admission authority that had not understood fully the responsibilities and duties that fall on them, in particular, but not exclusively, community schools which had converted to academy status.

Other issues

141. In response to some of the concerns that emerged over recent years and were reported again last year I asked local authorities to comment on two matters. First there have been objections concerning feeder primary schools for admission to secondary schools, in particular, the issue that failure to attend a named feeder primary school meant that the child would have no possibility of attending a particular secondary school. The 2012 Code permits a school to name one or more feeder schools, but has tightened the requirements for doing so. From the local authority reports the data show that in 109 authorities at least some secondary schools name feeder primary schools. Of these, 99 authorities say they are content that the arrangements do not mean that it becomes essential to have attended one of the feeder schools in order to gain a place at the secondary school.
142. Where there are concerns they mostly relate to children moving primary schools in years 5 and 6 in order to gain a higher priority for admission to a popular secondary school; the low chance of gaining a place at popular and oversubscribed secondary schools unless attending a named feeder school; and the lack of rationale for the naming certain schools as feeder schools.
143. The second matter is the extent to which local authorities are satisfied that the admission arrangements for all own admission authority schools comply with the Code. Paragraph 3.2 of the Code says, "*Local authorities **must** refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful*". I said last year that , "As part of the co-ordination process it may be

useful next year to know how many local authorities do look at admission arrangements for compliance with the Code so that they can feel confident that parents looking for a place for their child do have fair access to schools in their area.”

144. I asked local authorities to describe the process they use to assess whether admission arrangements comply with the Code and what they do if they thought that any were not compliant. The majority of authorities say they have a checking process by one or more members of the admissions team and seek advice from a legal team if this is thought necessary. If any arrangements were thought not to be compliant the most common response was that they would discuss the matter with the school and expect the matter to be resolved. If concerns remained they would, in accordance with the Code, refer the matter to the OSA.
145. Although it is understandable that a local authority may not wish to object to the admission arrangements of one of the schools in its area, if in the view of the local authority the arrangements do not comply with the Code then, as some authorities have done this year, they must lodge a formal objection with the OSA. Ten local authorities rightly made referrals this year as required by the Code.
146. I remain concerned that adjudicators still find matters that ought to have been dealt with during a local authority’s checking process about, for example, sixth form admission arrangements and incorrect wording about looked after and previously looked after children. No amount of checking can ever guarantee that there will not be any objections, but matters of factual accuracy such as inaccurate references to looked after and previously looked after children ought to have been remedied.
147. In response to the Secretary of State’s remit letter to me and information available to me during the year I asked local authorities for an, *“assessment of the impact in local areas of having more admission authorities and any implications for parental choice”* of having many or most own admission authority schools in their area.
148. This year 17 local authorities, up from 13 last year, said they had carried out at least some investigation into the impact of having more, possibly many or most, schools in their area that are their own admission authority. Of the rest, some said they had not yet made any assessment, others said they may do so in future. With more schools becoming their own admission authority it may be sensible to return to this question next year.
149. Many schools that have converted to become academy schools were already their own admission authority as foundation or voluntary aided schools. In terms of schools of all types and in particular schools that have become academies, the most significant change this year has been that about two thirds of the primary schools that have become academies were previously community schools. This

group of schools accounted for some of the issues where they had changed their arrangements without proper consultation and were uncertain about exactly what they needed to do to determine their arrangements. Probably wisely for small schools taking on a range of new responsibilities, some retained the local authority's arrangements for community schools.

150. In response to the question, "*If the admission arrangements of individual schools are all considered to be lawful, is there any difficulty for parents in securing a place at a local school?*" just over half the local authorities said yes. The reasons overwhelmingly related to the increase in demand for primary school places and were not linked over the last year to any increase in the number of own admission authority schools.

Concluding comments

151. The OSA has had another busy year with a period of a low level of cases over much of the year and then a summer with a high level of cases. The number of referrals does not accurately indicate how much time adjudicators have had to devote to their work as it is the complexity of a case as it unfolds that has the greatest influence on the number of hours worked. We have tried to ensure we have all the relevant information to deal with a case so that we can demonstrate that our decision has been properly made. Very few cases this year have been straightforward. I am grateful for the effort that everyone in the team has put in to help to meet the OSA's remit
152. The impact of the changes made to matters concerning admissions to schools as a consequence of the Education Act 2011 and 2012 Code has been seen in some of the objections to admission arrangements, particularly in relation to admission to primary schools and in who can object.
153. It is particularly encouraging that effective use has been made of a local authority's fair access protocol when children have been without a school place, and that very few children have had to be found a place through beginning the process for making a direction or of reaching the point where a school is directed to admit a child.
154. It is unsatisfactory, however, that yet again we have seen some of the same breaches of the Code, such as the consultation process not meeting the requirements of the Code; arrangements not determined on time; full arrangements not published on the admission authority's website; prohibited information requested on supplementary information forms; and incomplete arrangements for admission to sixth forms. Schools that are their own admission authority have a responsibility to provide all the necessary information on their websites: it is more than time that they understood it is not an optional extra. They have a duty to parents to comply with the Code rather than add to the anxiety that many parents feel when considering making their preferences for a school place for their child.

Main findings and action required

155. Since the last annual report in November 2012 the changes brought about by the Education Act 2011 and the associated new regulations and Code have had an impact on the work of adjudicators in connection with admissions. Draft regulations on statutory proposal work may have an effect in 2014. The Secretary of State's remit letter asks that the annual report should give, *"the strategic view of fair access in the round, and explain what, if any, further steps would support improvements to the system in line with wider Government reforms..."*.
156. This year we have seen some impact of the shorter, sharper Code and the new provisions. While the Code is easier to follow in some respects, in others it has opened up uncertainty about certain provisions which in turn has resulted in objections to admission arrangements. The scope for any person or body to object has, as last year, produced objections from sources that would not previously have been possible. Adjudicators have kept at the forefront of their work the overall principles behind setting admission arrangements as set out in paragraph 14 of the Code.
157. I have come to the view that this year I should present some main findings and from them indicate the action that is required to deal with the issue and would if acted upon improve further the fair access for all children to schools.

Main finding 1. Too many admission authorities do not comply fully with the Code in respect of consultation about and determination of their admission arrangements as summarised in paragraph 15 of the Code. Neither do they check that their arrangements conform with the principles behind setting admission arrangements as explained in paragraph 14 of the Code.

Action required. All admission authorities must comply with the requirements of the Code in respect of consultation about and determination of their full admission arrangements. They should check their arrangements against paragraphs 14 and 15 of the Code. Local authorities should take firmer action with admission authorities to ensure they consult parents and all those listed in paragraph 1.44 of the Code so that they have the opportunity to comment on proposed changes to arrangements.

Main finding 2. Too many admission arrangements for admission to sixth forms fail to comply with the requirements of the Code.

Action required. All schools that admit students new to the school into the sixth form need to ensure they comply with the general requirements of the Code, including those for consultation, determination, a published admission number for new students and publishing the arrangements. The arrangements also need to include any matters that apply specifically to the

sixth form. Local authorities need to ensure that they play their part and meet in full the requirement in the School Information (England) Regulations 2008 to include the arrangements for admission to the sixth form in a composite prospectus.

Main finding 3. Admission arrangements for admission to all relevant age groups are often difficult to find on a school's website; do not make clear the year to which they apply or are incomplete.

Action required. Admission authorities need to be more responsible in publishing their admission arrangements once determined and local authorities should make checks to ensure that admission authorities meet the requirements of the Code about publishing their arrangements.

Main finding 4. New schools and those that become their own admission authority do not always fully understand their responsibilities for having lawful admission arrangements that comply with admissions law and the Code.

Action required. The Department for Education should ensure that there is clear guidance for new schools and those that change their status to become their own admission authority about the requirements and timetable to be followed concerning admissions matters.

Main finding 5. The practice of some primary schools of giving priority for admission to the reception year to children who have attended particular nursery provision has been found to be unfair to other local children.

Action required. The Department for Education should consider issuing guidance for schools and local authorities so that there is fair access to schools for all children on reaching compulsory school age in order that children are not disadvantaged by any decisions their parents make about the care of their children prior to compulsory school age or by access to specific child care.

Appendix 1 - Case details 2012/13 and 2011/12

Objections to admission arrangements	2012/13	2011/12
Total cases considered	189*	203**
Decisions issued: upheld	46	43
Decisions issues: part upheld	51	63
Decisions issued: not upheld	20	51
Decisions outstanding	44	27
Out of Jurisdiction	23	18
Withdrawn	5	1

* 162 new referrals and 27 decisions outstanding from 2011/12

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

Variations to admission arrangements	2012/13	2011/12
Total cases considered	24*	64**
Decisions issued: approved	15	38
Decisions issues: part approved/modified	0	4
Decisions issued: rejected	1	3
Decisions outstanding	4	3
Out of Jurisdiction	2	1
Withdrawn	2	15

* 21 new referrals and 3 decisions outstanding from 2011/12

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

Directions of pupils to a school	2012/13	2011/12
Total cases considered	5*	15**
Decisions issued: upheld	1	3
Decisions issued: not upheld	0	5
Recommendations to the EFA	2	0
Decisions outstanding	0	0
Out of Jurisdiction	1	5
Withdrawn	1	2

** 5 new referrals and 0 decisions outstanding from 2011/12*

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

Statutory Proposals	2012/13	2011/12
Total cases considered	16*	27**
Decisions issued: approved	9	21
Decisions issued part approved/modified	0	0
Decisions issued: rejected	2	0
Decisions outstanding	1	2
Withdrawn	2	2
Out of Jurisdiction	2	2

** 14 new referrals and 2 decisions outstanding from 2011/12*

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

Land Transfer	2012/13	2011/12
Total cases considered	11*	16**
Decisions issued	4	9
Decisions outstanding	3	1
Out of Jurisdiction	2	0
Withdrawn	2	6

** 10 new referrals and 1 decision outstanding from 2011/12*

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

Appendix 2 - OSA Expenditure 2012-13 and 2011-12 ¹

Category of Expenditure	2012-13 £000	2011-12 £000
Adjudicators' fees	337	309
Adjudicators' expenses	19	19
Adjudicator training/meetings	30	1
Office Staff salaries	167	143
Office Staff expenses	6	3
Legal fees	19	22
Publicity ²	1	22
Consultancy fees	0	0
Administration/consumables	1	1
Total	580	520

Notes:

1. Information relates to financial years 2011-12 and 2012-13. The report covers the academic year 2012/13.
2. 'Publicity' in 2011-12 relates to publication of the outcome of adjudications as required by regulations which were in force up to 31 March 2012 and to notification of public meetings. 'Publicity' costs in 2012-2013 relate only to notification of public meetings.



Office of
the Schools
Adjudicator

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