



Office of  
the Schools  
Adjudicator

# Office of the Schools Adjudicator Annual Report

September 2017 to August 2018

December 2018

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## Introduction and executive summary

1. This report covers the period 1 September 2017 to 31 August 2018 and is my third report as Chief Adjudicator.
2. I hope the findings in this report will be of use to the Secretary of State, his Ministers and their officials, local authorities, faith bodies, academy trusts and school governing boards. As last year, I have tried to keep the report relatively short in recognition of the demands on the time of those for whom the report is relevant.
3. This year we dealt with cases from across our remit. Along with carrying out our casework, adjudicators have over the year spoken at a number of events in order to explain our work and answer questions from schools and others. While it is not part of our remit to give advice, we are glad to take opportunities to set out examples of the good practice we see and to draw attention to common breaches of requirements. I have attended meetings of the Department for Education (DfE) convened Admissions Group and found it very helpful to talk to and hear from its members who include representatives of local authorities, academy trusts, faith groups and others. I have also had useful meetings with DfE officials and with ministers.
4. The report seeks to draw out the key messages from adjudicator case work, from points made to us in meetings and at events and from the reports made to me by local authorities in accordance with The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and the School Admissions Code (the Code). I am grateful to those local authority officers responsible for submitting reports to me. I am also grateful to the schools, academy trusts, parents, local authorities and others who took the time to give feedback on how the Office of the Schools Adjudicator (OSA) handled the cases in which they were involved.
5. We have seen much that is to be commended. Adjudicator casework and reports from local authorities continue to suggest that the admissions system as a whole works effectively in the normal admissions rounds and that in the normal admissions rounds the needs of vulnerable children and those with particular educational or social needs are generally well met.
6. Last year, I reported that local authorities had told me that the admission authorities for over 300 schools were giving some priority in their arrangements to children on the basis of eligibility for one or more of the **pupil, early years or service premiums** (the premiums). This year's reports suggest that the admission authorities for around 550 schools now make use of one or more of the premiums in their oversubscription criteria and I say more about this in part 2 of this report. This year I also asked about numbers of children educated at home – what is known as **elective home education**. Again I say more about this in part 2 of this report, including the reasons local authorities consider lie behind the decisions of some parents to remove their children from school for home education and the

consequences of such decisions.

7. As reported in previous years, local authority reports and adjudicator direction and direction advice casework suggest there continue to be challenges in securing places promptly for children – especially vulnerable children – who need them outside the normal admissions rounds and I say more about this also later in the report.
8. So far as OSA casework is concerned, overall, the number of new cases rose this year from 163 in 2016/17 to 198 in 2017/18. The increase was driven by higher numbers of objections to and referrals of admission arrangements and requests for variations to determined admission arrangements. The number of other types of cases combined fell.
9. **Objections to and referrals of admission arrangements** have continued to form the largest part of our work. A total of 129 objections were made to admission arrangements. This was more than the 100 received the previous year but as I explain in more detail later in the report this higher figure includes a large number of objections made to the arrangements of two schools. Of the 116 cases completed in the year<sup>1</sup>, 37 objections were upheld; 31 partially upheld; and 48 not upheld. As in previous years, objections covered a large number of matters including the selection of feeder schools, testing arrangements in grammar schools, faith based arrangements and catchment areas. This year saw a rise in the number of objections made to reductions in published admission numbers (PANs). We also noted increased numbers of websites not being up to date or containing contradictory material and that in too many cases incorrect definitions of looked after and previously looked after children appeared in arrangements.
10. The number of requests for **variations** to the determined admission arrangements of maintained schools rose again from 41 last year to 52. The main reason for seeking variations related, as last year, to proposed reductions in PANs for primary schools with significant levels of surplus places. Given the increased number of requests for variations, I am disappointed to note that in a significant number of cases the admission authority (both schools and local authorities) had failed to follow the statutory process for a variation and/or failed to provide the necessary information with the variation request. Where the admission authority had not followed the statutory process this meant that the adjudicator did not have jurisdiction to consider the application until that process had been completed.
11. The number of new referrals against a local authority's notice of intention to **direct a maintained school to admit a pupil** combined with the number of cases where the Education and Skills Funding Agency (ESFA) **requested advice on the admission**

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<sup>1</sup> Some of the completed cases had been carried forward from the previous reporting year and some of the new cases were subsequently carried forward to the next reporting year.

**of a child to an academy** was 12. This was an increase of one from last year and all were completed during the reporting year.

12. Three **statutory proposals** were referred to the adjudicator: a fall of three from last year. The number of **land transfer** cases remained very small with two new cases received.

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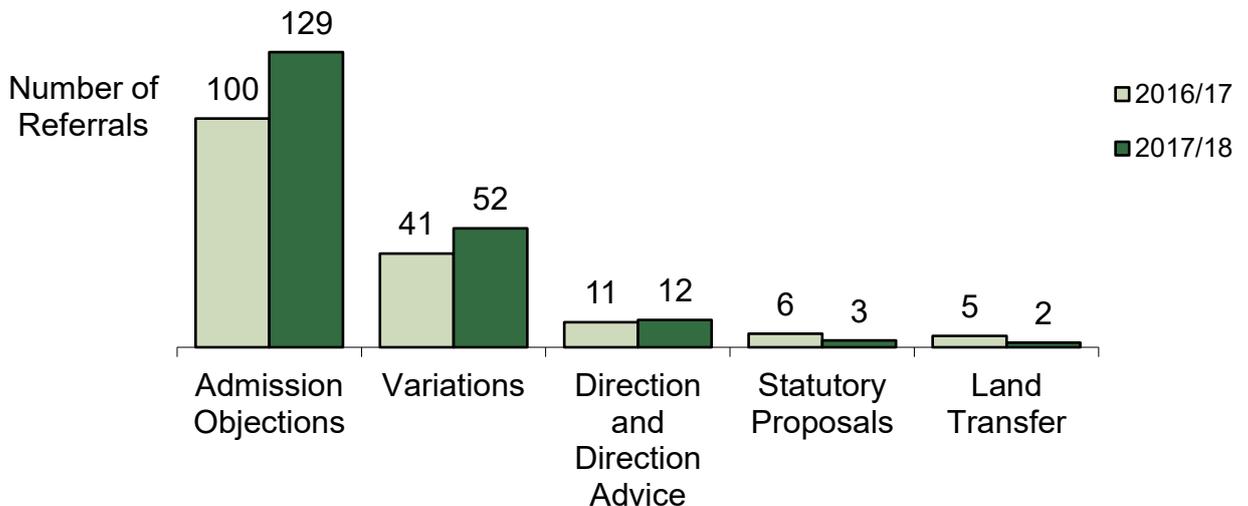
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## Part 1 - Review of the year 2017/18

13. The overall number of cases referred to the OSA in 2017/18 was 198 compared with 163 in 2016/17. This increase reflected higher numbers of objections to and referrals of admission arrangements (which rose from 100 to 129) and a higher number of requests for variations to determined arrangements (which rose from 41 to 52). We began the year carrying forward 34 admissions cases and 11 other cases. The number of new cases – primarily objections to admission arrangements - began to rise from February, reaching a peak in May with 82 objections to admission arrangements received that month, of which 19 were received on the deadline for objections. This year 37 objections to and referrals of admission arrangements were carried forward into the 2018/19 reporting year along with 21 other cases.

Figure 1: Referrals by type 2016/17 and 2017/18



## Admissions

### Objections to and referrals of admission arrangements

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

|   | 2017/18 | 2016/17 |
|---|---------|---------|
| Number of cases considered                                  | 163     | 175     |
| Number of new cases   | 129     | 100     |
| Cases brought forward from previous year                    | 34      | 75      |
| Number of individual admission authorities within new cases | 78      | 91      |
| Cases finalised   | 126     | 141     |
| Number of objections: fully upheld                          | 37      | 37      |
| partially upheld  | 31      | 56      |
| not upheld  | 48      | 33      |
| Cases withdrawn   | 1       | 3       |
| Cases out of jurisdiction                                   | 9       | 12      |
| Cases carried forward into following year                   | 37      | 34      |

14. The 129 new cases received this year related to 78 individual admission authorities. This is a decrease in the number of admission authorities referred to the OSA from last year when the 100 new cases covered 91 admission authorities. In this reporting year, we saw something of a return to a pattern seen two years ago of a large number of objections to the arrangements of a small number of individual schools with 20 objections being made to the arrangements of one academy (which were not upheld) and 12 to the arrangements of one community school (which were upheld). As in past years, new cases related to all categories of schools with 21 concerning the admission arrangements for community and voluntary controlled schools in six local authorities, eight the arrangements for individual voluntary aided schools, four for three foundation schools and 96 for 61 academy schools, including free schools. As last year, non-compliant arrangements were found for every category of schools, including schools where the admission authority is a local authority, a board of governors or a multi-academy trust. Parents remained the single largest group of objectors, accounting for about half of all objections. Local authorities were the objector in just over 20 per cent of cases and other objections came mainly from other schools and members of the public.

15. In 27 cases, the adjudicator did not uphold the objection and did not report any other matters of non-compliance. In seven cases the objection was upheld or partially upheld but no other matters of non-compliance were found.
16. As noted in previous reports, in most cases before us the objector's interest and reason for objecting was clear. It is quite understandable that parents should exercise their right to object when they think that a set of arrangements will mean that their child will not have a high priority for a particular school they would like the child to attend. Whether or not the objection is upheld, one can see why the parents have objected. Similarly, objections from local authorities may not always be upheld but the basis for the objection is generally understandable. I continue to be concerned as I reported last year and as my predecessors have reported that some objections are made to advance a desire to change the requirements relating to admissions rather than because a particular set of determined arrangements did not conform with those requirements as they currently stand.
17. For this year, a change has also been made to adjudicator processes. The law requires that those making objections provide their names and addresses to the adjudicator. It has been our practice that where individual objectors asked that their identity was not shared with the school and other parties, we would agree that request. It is understandable why a parent – perhaps hoping that his or her child might secure a place at the school – would not want the school to know that he or she had made an objection. On the other hand, it is also understandable that admission authorities may wish to know who is objecting to their arrangements. This may particularly be the case where, as noted above, an objection may be motivated by a desire to change the requirements relating to admissions rather than by a concern as to whether a particular school's arrangements are lawful. Having reviewed our processes in the light of these factors, adjudicators will now withhold identities of objectors at their request where they have parental responsibility for a child who will be the right age to join the school concerned in the admission year concerned. We will also consider requests for identities to be withheld in other circumstances but these will be agreed only if a convincing case is made. Where objectors are not parents, we think it is right that in most cases schools should know who is objecting to their arrangements.
18. As in past years, adjudicators found that, in most cases, arrangements had been properly determined and were easy to find on school or local authority websites. There were exceptions, including six cases where the admission arrangements had not been determined. In other cases, where supplementary information forms or catchment area maps were used these were not available on websites or website links to important pieces of information did not work. Too frequently, adjudicators found that arrangements did not use the full definition of looked after and previously looked after children set out in the Code. The Code requires that these groups of children be given very high levels of priority in admission arrangements and it is troubling if arrangements do not appear to include all the children covered by this entitlement. It also remains the case that some arrangements do not include

information required by the Code such as that concerning out of normal age group admissions and, for children below compulsory school age, the rights to deferred entry and part-time attendance.

19. As school websites have become more detailed and intricate, it seems that occasionally material is updated in one part of the website but not another. This can mean that different and sometimes inconsistent or contradictory versions of arrangements exist at the same time on different parts of websites. This can be confusing and potentially misleading for parents. A parent who has found a version of a school's arrangements in one part of a website would have no reason to investigate further to see if a different version existed elsewhere. For local authority websites and the arrangements for community and voluntary controlled schools, I remain concerned that some local authorities do not make sure that the arrangements they determine for these schools are published after determination in a part of their website that is easy for parents to find. Too often the arrangements for these schools can only be found in a part of the website concerned with reports to the local authority's lead member or Cabinet. While three local authority areas contain no community or voluntary controlled schools, there remain over 9,000 such schools across the country for which the maintaining local authorities are the admission authority. All admission authorities are required to publish the determined arrangements for the schools for which they are the admission authorities on their websites each year. This duty applies to local authorities as much as to other admission authorities. Parents and others have the same right to see and, if they wish to, to object to the admission arrangements of community and voluntary controlled schools as to the arrangements of other schools.
20. I reported last year on adjudicators' findings in respect of the **consultation** required by paragraphs 1.42 to 1.45 of the Code in certain circumstances. Last year's report also included information about the characteristics of good practice on consultation based on adjudicators' experience in their casework and instances of good practice provided by local authorities at my request. This can be found at: <https://www.gov.uk/government/publications/osa-annual-report>. This year we again found cases where consultation failed to meet the requirements set out in the Code. Consultation is a legal requirement when changes to arrangements are planned or when no consultation has been carried out for seven years. In addition, as the Code says, "*Failure to consult effectively may be grounds for subsequent complaints and appeals.*"
21. As in previous years, objections were made to a range of matters. These included objections to the use of **feeder schools, catchment areas, faith based arrangements** and relative levels of priority given or not given to **siblings** and to whether or not arrangements as a whole were **fair and clear** and whether oversubscription criteria were **reasonable**. A number of objections were also made to the arrangements for **testing at selective schools**. All these matters were covered in some detail in my report last year. As before, adjudicators found that in some cases specific Code requirements had not been met whereas in others it was

the overall effect of the arrangements that was of concern. I will not repeat the points made last year as that report remains available for those with an interest, but will focus rather on what was different about objections this year.

22. Figures from the DfE show that between January 2017 and January 2018 the number of pupils across all school types rose by 66,000. Although some of this increase was still in primary schools, more of the rise was in secondary schools where numbers increased by 35,400 between 2017 and 2018. Against this background, we received a number of objections from local authorities about reductions in the **published admission number** (PAN) set by admission authorities. There were 11 such objections in total, six of which concerned secondary schools. In making these objections, local authorities expressed concern that places that were needed to allow the local authority to discharge its duty to secure the provision of school places were being removed. Where the proposed PAN was lower than the number of pupils who had been admitted in recent years, a further argument made was that the reduction would act to restrict the scope for parents to have their preferences met. In determining these objections, adjudicators took account of whether there was evidence that the places to be removed were likely to be needed in the coming years. Adjudicators also had it in mind that if an objection to the reduced PAN were not upheld, there would be no scope for the local authority or any other body to object should the same PAN be set in future years. This is because, while objections can be made to a reduced PAN, no objection can be made where an admission authority sets a PAN which is the same or higher than the PAN set the previous year.<sup>2</sup>

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<sup>2</sup> The only exception to this is that the governing board for a community or voluntary controlled school can object if the PAN set by its local authority as the admission authority is lower than the governing board would wish.

## Variations to determined admission arrangements of maintained schools

**Table 2:** Variations to admission arrangements

|   | 2017/18 | 2016/17 |
|---|---------|---------|
| Number of cases considered                | 58      | 41      |
| Number of new cases                       | 52      | 41      |
| Cases brought forward from previous year  | 6       | 0       |
| Decisions issued: approved                | 34      | 28      |
| Cases finalised                           | 39      | 35      |
| Decisions issued: part approved/modified  | 0       | 0       |
| Decisions issued: rejected                | 2       | 3       |
| Cases withdrawn                           | 2       | 1       |
| Cases out of jurisdiction                 | 1       | 3       |
| Cases carried forward into following year | 19      | 6       |

23. Once determined for the relevant school year, admission arrangements can only be varied, that is changed, in limited, specified circumstances. An admission authority may propose a variation if it considers there has been a major change in circumstances, but such proposals for a maintained school must be referred to the adjudicator. Proposed variations to academy arrangements are a matter for the ESFA. Some variations, for example to comply with a mandatory requirement of the Code, do not require approval by either the adjudicator or the ESFA as the case may be.
24. As has been the case in recent years, the great majority of requests for a variation were to reduce determined PANs for primary schools. The reasons included that the school had been significantly undersubscribed for a number of years or that numbers of children in the area and seeking a school place had fallen sharply. In some cases, expansions had been planned in anticipation of rising demand and PANs increased accordingly only for the expected demand to fail to materialise. These variations were approved where the data suggested that places would not be needed. Variations were not approved where the evidence was that there was

demand for the number of places. Other reasons for seeking variations included to give priority for siblings at linked infant and junior schools where this had been omitted by accident, to change a catchment area to include an area previously within the area of a school that was closing or to make changes consequent on the approval of other prescribed alterations to schools.

25. This year, I regret to have to note that a number of proposals for variations have taken longer to complete than should be necessary as the admission authority concerned had failed to follow the required statutory process. While there is no requirement for general consultation before a variation is sought, there is a requirement to notify certain bodies before asking for a variation and where the admission authority is not the governing board, there is also a requirement to consult the governing board. This is explained in paragraph 3.6 of the Code. Some cases were delayed because the admission authority had not notified these groups or, in the case of community or voluntary controlled schools, the local authority had not consulted the governing board. Adjudicators cannot lawfully consider cases where the necessary statutory processes have not been followed. Other variation cases were also delayed because the admission authority (including both local authorities and school governing boards) had failed to provide the information necessary for the adjudicator to consider the case.

### **Directions to maintained schools to admit a child and advice to the Secretary of State on requests to direct an academy to admit a child**

26. Under Sections 96 and 97 of the School Standards and Framework Act 1998 (the Act), the admission authority for a maintained school may, in certain circumstances, appeal to the adjudicator if notified by a local authority of its intention to direct the school to admit a child and the admission authority believes it has a valid reason not to do so. If a local authority considers that an academy would be the appropriate school for a child without a school place and the academy does not wish to admit the child, the local authority may make a request to the ESFA to direct, on behalf of the Secretary of State, the academy to admit the child. In such cases, the ESFA may (again on behalf of the Secretary of State) seek advice from the adjudicator.

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

|   | 2017/18 | 2016/17 |
|---|---------|---------|
| Total number of cases considered          | 12      | 12      |
| Number of new cases                       | 12      | 11      |
| Cases brought forward from previous year  | 0       | 1       |
| Cases finalised                           | 12      | 12      |
| Maintained schools – decision to:         |         |         |
| • Admit the child                         | 2       | 4       |
| • Not admit the child                     | 0       | 2       |
| • Direct to another school                | 0       | 1       |
| Advice to Secretary of State to:          |         |         |
| • Admit the child                         | 0       | 1       |
| • Not to admit the child                  | 3       | 2       |
| Cases withdrawn                           | 4       | 1       |
| Cases out of jurisdiction                 | 3       | 1       |
| Cases carried forward into following year | 0       | 0       |

27. These cases are given the highest priority by OSA staff and adjudicators as they involve children and young people who may be missing education. In relation to maintained schools, I was disappointed that in three out of the 12 cases we received the local authority had not followed the procedure set out in the Act. A further four were withdrawn by the local authority. In some cases we understand that this was because the school concerned had agreed to admit the child but in others we believe it may have been because the correct procedure had not been followed by the local authority. These instances of failure to follow the necessary procedure were particularly disappointing given that we had seen an improving picture in the 2016/17 reporting year. As can be seen from the table, the adjudicator concluded in both of the cases considered relating to maintained schools that the school should admit the child. In the three cases relating to academies, the

adjudicator advised the Secretary of State that the academy should not be required to admit the child. Information about the number of directions made by local authorities and on requests for the Secretary of State to direct academies to admit children is included in Part 2 of this report.

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

28. The number of statutory proposals referred to the OSA fell from six to three. One, which concerned the discontinuance of an infant school and a junior school and their replacement with a primary school, was approved. One case was found on investigation to be out of our jurisdiction because the proposals themselves had not been lawfully made. The final case referred to us in this reporting year was a referral by a governing body of a foundation school of a decision by the local authority to discontinue (close) the school. This case was received in August 2018 so at the end of the reporting year and carried forward into the 2018/19 reporting year.

## **Land matters for maintained schools**

29. Two new cases were referred to us during the year and we carried over five from the last reporting year. We issued decisions in four cases. Two concerned the treatment of land consequent on the removal of a school's trust and in both cases the land was transferred to the governing board. The two other completed cases concerned whether or not particular pieces of land should transfer to a governing board consequent on a change of category. In one the land was transferred to the governing board and in the other some of the land was transferred and some remained with the local authority. One case was withdrawn, one was out of our jurisdiction and one was carried forward into the 2018/19 reporting year.

## Part 2 - Summary of local authority reports 2018

30. This section summarises the reports that the 152 local authorities in England responsible for education are required to submit to the OSA. Each local authority must also publish its full report locally.
31. I am grateful to local authorities for submitting their reports and especially to the 114 that submitted the report by the deadline of 30 June. I am also particularly grateful to those local authorities that took the trouble to comment thoughtfully on the matters raised. In response to feedback in previous years and our own experiences of considering the reports, we changed the format of the report for this year and 37 local authorities commented that they welcomed the changes.
32. Not all local authorities answered every question raised and not all questions were relevant to every local authority. The tables below, therefore, will not always show responses from 152 local authorities and, as explained below too, some data provided to me is known not to be comprehensive or entirely accurate. I have quoted from individual local authority reports where it seemed to me the comments reflected widely held views or made particularly important points. Where the circumstances of different local authorities give rise to differing views and perceptions I have tried to reflect the range of such views and perceptions. As might be expected, local authorities commented particularly on matters where they faced challenges and problems. Reports also gave examples of good practice and I have included these in the hope that they may be useful to others. Difficulties in securing places for children in year, particularly for more vulnerable children, and the risk that in consequence children might miss education, were the most frequently raised concerns.

### Admission arrangements in the normal admissions rounds

#### Determination and publication of arrangements

33. All admission authorities are required to determine their arrangements annually and **must** then publish them. I would expect all local authorities to meet these requirements and 132 local authorities said they determined their arrangements for 2019 by 28 February 2018 as required by the Code. Three local authorities have no community or voluntary controlled schools so have no arrangements to determine. This means that 17 local authorities did not determine their own arrangements by the legal deadline. Furthermore, of the 149 local authorities with arrangements of their own to publish, only 131 did so by 15 March, which is the date by which they are required to publish details of where all the admission arrangements for publicly funded schools in their area can be seen. It is disappointing to see these local authorities, a higher number than in 2017 when 13 failed to meet the deadline, not fulfilling their relatively simple duties in this regard. Two local authorities (Cumbria and Slough) reported that they did not publish their arrangements for 2019 until

June 2018 and similarly published their arrangements for 2018 in June 2017. The closing date for any objections to admission arrangements is 15 May. Failing to publish arrangements until after the deadline for objections is deeply unfair to local parents in particular as it effectively frustrates their right to object to arrangements if they wish to do so.

34. Many local authorities provide advice and guidance to admission authorities in their areas. As one local authority told me, *“We have a strong relationship with schools who are their own admission authority and provide ongoing support throughout the year on admission arrangement wording and how it is applied in practice. We also provide timely advice and guidance to schools on the consultation and determination timeline each year to ensure they take account of this in their planning. There is a dedicated mailbox for schools to send through any admission arrangement queries as well as their determined policies and policies are compared year on year to identify any changes and discussions held with schools to ensure that their governors are satisfied that they have complied with the Code.”* Such an approach is likely to mean that any concerns the local authority has or any queries the admission authority wishes to raise can be dealt with before arrangements are determined and can avoid local authorities having to challenge arrangements that they believe do not comply with the Code. Unfortunately, some local authorities described similar approaches but still expressed concerns about the arrangements of some of the other admission authorities in their areas.
34. Effective working between local authorities and admission authorities before arrangements are determined may explain why fewer local authorities (61) queried the arrangements of one or more schools in their area this year than did so in 2017 (81). It is also clear that as the number of schools that have other admission authorities continues to rise local authorities find carrying out the necessary scrutiny of these arrangements increasingly difficult. In this context, only 19 local authorities were able to report that all own admission authority schools had provided their admission arrangements to the local authority by the deadline for doing so of 15 March. One local authority said there are 230 admission authorities in its area and as another commented, *“it takes an excessive amount of time to gather and check other admission authorities’ arrangements.”*
35. Failures to consult, determine, publish and provide to the local authority copies of arrangements by 15 March, as required by the Code, were matters that local authorities told me they most commonly raised with admission authorities. When they queried the provisions of the arrangements themselves, the most frequently raised matters were:
- a. arrangements not being properly updated so that website links failed to work or contact details were wrong;
  - b. definitions (for example of siblings) either missing or lacking in clarity;

- c. the content of supplementary information forms not conforming with the Code's requirements; and
- d. arrangements not including the required information on the right to request admission outside the normal year of entry.

### Pupil, service and early years premiums in oversubscription criteria

36. I again asked local authorities about the use of the premiums in arrangements. A summary of the responses is provided in table 4 below. All the information in the tables in this section is based on local authority reports. Given the number of different admission authorities concerned and the scope for admission arrangements to be changed, it is not realistic to expect local authority figures to be absolutely accurate and up to date. The figures set out here should accordingly be treated with caution. That said, local authorities reported that 552 schools are using at least one of the premiums in their arrangements for 2019, compared to 329 for 2018. This may reflect an increase in the number of schools using at least one of the pupil premiums but it may, in part at least, also reflect more accurate reporting.

**Table 4:** Reported use of premiums in oversubscription criteria for 2019 (2018 in parenthesis)

| Type of premium | Early Years | Pupil     | Service   | Number of schools using at least one of the premiums |
|-----------------|-------------|-----------|-----------|--|
| Primary         | 100 (56)    | 101 (57)  | 275 (136) | 352 (184)  |
| Secondary       | N/A         | 150 (113) | 67 (43)   | 188 (135)  |
| All through     | 2 (4)       | 9 (9)     | 7 (6)     | 12 (10)  |
| Total           | 102 (60)    | 260 (179) | 349 (185) | 552 (329)  |

37. Two local authorities use the early years premium across all or some of their community and voluntary controlled primary schools; there are no other community or voluntary controlled primary schools for which the early years premium is used. Local authorities report that 150 secondary schools use the pupil premium or part of it (often free school meals eligibility) in their arrangements. Of these, 118 are grammar schools and many give the highest priority in their oversubscription criteria (after looked after children and previously looked after children who meet the required standard in their ability tests) to children eligible for the pupil premium who meet the required standard. In some – but not all - cases, there is concern that the proportion of children eligible for the pupil premium securing places at the schools has not increased in the ways hoped for. Some local authorities tell me that they are working with their grammar schools for ways to combine the use of the premium with other approaches in order to have a greater impact. A few grammar schools

use the pupil premium but as a low priority or even as a tie-breaker. The use of one of the premiums as a tie-breaker to distinguish between applicants for the final available place was also reported as being used in some primary schools. I note that such limited use is unlikely to alter the intake of a school significantly.

38. The service premium is used in many or all community and voluntary controlled schools in four local authorities. In at least one of these local authorities, it is also used by a number of other admission authorities. In some local authorities the service premium appears to be used in the arrangements of schools in a particular town or area in response to local circumstances. Those in the armed forces may have to move home at times other than normal points of entry and so this priority may particularly benefit children of service families when they apply for places in year, as they will be placed near the top of any waiting list.
39. Overall, the number of schools for which one of the premiums is being used remains low as a proportion of the number of schools in England and I explored the reasons for this in my report last year. However, some local authorities and admission authorities have clearly decided it is appropriate to include one or more of the premiums in their arrangements.

### Co-ordination of admissions at normal points of entry

40. Around 640,000 children were admitted to reception year (YR) and around 584,000 children were admitted to Year 7 (Y7) in September 2017. The co-ordination of this number of admissions is a major exercise and 147 local authorities with regard to YR and 145 local authorities with regard to Y7 said this had gone very well or there had only been small problems as illustrated by table 5.

**Table 5:** Summary of how well co-ordination worked for admissions at the normal point of entry in 2017<sup>3</sup> (comparable figures for 2016<sup>3</sup> admissions in parenthesis)

|  | Not well | A large number of small problems or a major problem | Well with a few small problems | Very well |
|--|----------|---|--------------------------------|-----------|
| Reception                                  | 0 (0)    | 4 (5)   | 55 (38)                        | 92 (108)  |
| Year 7                                     | 1 (0)    | 4 (3)   | 52 (42)                        | 93 (106)  |
| Other relevant years of entry <sup>4</sup> | 4 (1)    | 1 (6)   | 30 (26)                        | 69 (70)   |

<sup>3</sup> Not all local authorities answered all questions so figures will not add up to 152.

<sup>4</sup> Not all local authorities have years of entry other than YR and Y7 so figures will not add up to 152.

41. The one local authority that said that Y7 co-ordination had not gone well attributed this to problems with exchanging information with other local authorities. Problems in sharing and exchanging information across local authorities were also reported by a number of local authorities. In addition, there were reports of other problems flowing from the fact that different local authorities use different dates and different timetables after the national offer days for subsequent rounds of offers of places and for handling late applications.
42. Factors that local authorities felt helped ensure the smooth running of the system included high proportions of applications for places being made online and the national closing dates for applications and national offer days. Some local authorities reported that they supported admission authorities in their areas, for example, by providing training and/or by carrying out ranking of applications for them and said that this also helped the whole process run well.
43. In some areas, most notably London and the West Midlands, co-ordination extends beyond individual local authority areas and is regional. As one local authority said of the PAN London approach, a regional approach is *“successful in achieving its aim of eliminating multiple offers, simplifying the application process and increasing the number of pupils who receive an offer from one of their preferred schools,”* and *“provides significant benefits for applicants who wish to apply for local and out of borough schools, by providing a clear streamlined approach for the application process.”*
44. Overall, it is clear that, despite the scale of the task, admissions at the normal points of entry are generally efficiently managed across the country with any problems that arise being effectively addressed. Some frustrations were expressed about difficulties inherent in managing late applications. As in many previous years, local authorities spoke of the efforts needed to chase up those parents who do not make applications for places for their children especially for YR. They called again for a national campaign to draw attention to the need to apply and the deadline for application aimed at parents whose children will be joining primary school for the first time. Local authorities emphasise that it is the least advantaged families that tend to fail to apply for places for their children. While these children will secure a place, it may not be at a conveniently located or highly performing school.
45. The most commonly reported problem in normal admissions rounds, cited by around 50 local authorities, was of own admission authority schools failing to provide correct rankings by the required date. One local authority explained that 36 per cent of secondary schools in its area returned their ranking after the agreed date and 64 per cent provided incorrectly ranked lists. I was told that new academies particularly struggled. Naturally, time was then taken dealing with errors and delays and this in turn resulted in delays in exchanging information with other local authorities.

46. The nationally set requirements for co-ordination end with the national offer days. Different local authorities use different dates for late admission deadlines and further rounds of offers and some own admission authority schools start offering places directly to children. As one local authority said, *“every local authority operates their own late allocation process with numerous late deadlines, offer days and periods for exchanging data. This creates great confusion for parents applying for places in different local authorities, additional work for local authorities, incomplete information when allocating places and the potential for errors.”* It is clear that some local authorities are concerned that the efficiency of co-ordinating admissions does not continue in full after national offer dates.
47. Many local authorities expressed pride in the work they undertook to ensure that **looked after and previously looked children** were well served. I was given 40 examples of good practice particularly involving collaboration between different parts of the local authority working with these children. A typical example said *“close liaison between Assistant Director of Education, the virtual headteacher, social care, school admissions lead officer and school to promote good practice and support the most vulnerable students.”*
48. Schools were largely described as very welcoming to looked after children and previously looked after children at normal points of admission and, as one would expect, these children were normally allocated their highest preference schools. Local authorities again reported more challenges in working effectively across local authority boundaries. So far as I can discern from the reports, challenges arise from the different processes and working practices in different local authorities and, in particular, from the lack of personal relationships with and knowledge of individual schools that local authorities enjoy with schools in their own areas. In some parts of the country, efforts are being made to work constructively across boundaries and the information provided to me tentatively suggests that these are bearing fruit with increased collaboration through both formal networks and informal contacts. One local authority told me that on learning a child from another area was about to be allocated a place at a school that it knew was going to be subject to special measures it worked with the social worker concerned to secure the child’s admission to an outstanding school.

**Table 6:** Local authorities' views<sup>5</sup> on how well served looked after and previously looked after children are at the normal point of admission<sup>6</sup>

|   | Not at all | Not well | Well | Very well | Not applicable |
|---|------------|----------|------|-----------|----------------|
| Looked after children   | 0          | 0        | 10   | 141       | 0              |
| Looked after children in other local authority areas <sup>7</sup> | 0          | 6        | 35   | 108       | 2              |
| Previously looked after children                                  | 0          | 0        | 14   | 136       | 1              |

49. For admissions at normal points of entry and for in year admissions there were concerns that some of those actually making applications for looked after children (including foster carers or children's social workers) were not sufficiently knowledgeable about schools and the admissions system to make the most of the high priority afforded such children. In some cases, a child's social worker might move posts during the admissions process so there was also a lack of continuity.
50. I am very concerned that some local authorities reported difficulty in establishing whether a child had or had not been previously looked after. A child's status as previously looked after is a matter of fact with no room for the exercise of discretion: a child either falls within the Code's definition of previously looked after or he or she does not. A child with this status has a higher priority for school places than one who does not. It is therefore important that local authorities have robust mechanisms for assuring themselves of a child's status including when children live in other local authority areas. That said, it is reasonable to expect parents or carers to inform the local authority if they are seeking priority for a school place on the basis of a child's previously looked after status and to provide the necessary evidence of that status.
51. A few local authorities commented on the letter dated 4 December 2017 from the Minister of State for School Standards encouraging admission authorities to afford a high priority in oversubscription criteria to children who had been adopted from care abroad. I note that further guidance was issued on this matter by the DfE in August

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<sup>5</sup> Not all local authorities responded to all questions so figures will not add up to 152.

<sup>6</sup> Admissions at the normal point of entry and in year were considered together in the 2017 report. This means that the figures are not comparable so I have not included 2017 figures here

<sup>7</sup> This refers to cases where a child is looked after by the reporting local authority but placed in care in a different local authority area.

2018, which was after these reports had been submitted to me. One local authority has already introduced a priority for children adopted from care abroad for admissions in 2019 and at least two others plan to consult on introducing the priority for 2020.

52. I turn now to points made about the admission of children with **special educational needs and/or disabilities** (SEND) in the normal admissions rounds. Table 7 shows that all local authorities that responded to the relevant question believed that children with SEND are well or very well served at the normal points of admission. For the sake of brevity I will use the term ‘statutory plan for SEND’ to include statements of special educational needs (these should now all have been replaced) and education, health and care plans (EHC plans).

**Table 7:** Local authorities’ views on how well served children with SEND are at the normal point of admission<sup>8</sup>

|  | Not at all | Not well | Well | Very well |
|--|------------|----------|------|-----------|
| Children with statutory plan for SEND    | 0          | 0        | 43   | 109       |
| Children with SEND and no statutory plan | 0          | 0        | 75   | 77        |

53. Team working was seen by many local authorities as key to success. One local authority described the efforts it made to make sure that children with SEND had the best possible start in school thus, “...an individual officer in SEN was allocated the responsibility of identifying and fast-tracking children with high level support needs through the Education, Health and Care assessment process to ensure their admission was managed through the SEN statutory framework rather than through the universal admissions process. Having a single point of contact for parents, early years’ settings and schools has made a huge difference in securing the confidence of all concerned. This means that schools will be better prepared to meet the needs of children with complex needs in September, and children will experience a positive start to their compulsory schooling.”

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<sup>8</sup> Admissions at the normal points of entry and in year were considered together in the 2017 report. This means that the figures are not comparable so I have not included 2017 figures here

54. Around 20 local authorities reported that some admission authorities resisted the naming of their schools on a child's statutory plan. Worryingly, I was told that this is becoming more widespread "*as the pressures on LAs and school budgets increase. More schools are now, at the initial consultation, refusing to admit for less and less justifiable reasons.*" Another local authority said, '*some academies may be using informal means to dissuade some of these children.*' I was told that this could include making families visiting the school feel their child is not wanted or will not be supported there with the aim of encouraging the parents to ask for a different school to be named. Sometimes, I am told, schools seek to delay the statutory process again with the aim of encouraging parents to ask for a different school to be named.
55. Several local authorities noted challenges that arose when EHC plans had not been completed by national offer day. While the children would be admitted to the school finally named on the plan, delays in the process being completed and the plan finalised with the name of the school might mean children would miss out on transition arrangements and parents would not know which school the child would be attending until close to the start of the school year.
56. I next consider the admission of **children with SEND but no statutory plan and children with social and medical needs**. I have considered these groups together purely because local authorities in their reports to me tended to consider them together. The Code permits the use of social and medical need as a priority if the definition is clear and there are clear details about what supporting evidence is required.
57. Several local authorities said they could not comment on how well served children with SEND but without a statutory plan were as they did not hold sufficient data on the admission to school of such children. Those local authorities that did comment made points within two broad groups. The first group said that the admission of children with SEND but without statutory plans was no different from that of children without SEND. This is to be expected; applications from such children fall to be processed as all other applications. The other group of around 40 local authorities said that the majority of admission authorities in their area give a priority to children who have social or medical needs. Of course, a child for whom there is a social or medical need that he or she attend a particular school may or may not also have special educational needs or a disability.

## In year admissions

58. Any child from any background and with any type of educational history and experience may need to be found a place in a new school outside the normal admissions rounds as a result of a family move. Moving to a new school out of the normal rounds is daunting for any child as he or she needs to find a place among established friendship groups and learn new routines and rules. For vulnerable children the challenges are much greater, whether they have special educational needs, are newcomers to the country, have been excluded from another school,

taken into care or had to move because of family trauma. It is extremely concerning therefore that local authorities report again that securing places for these children in year can be difficult and that some schools, without good reason, appear unwilling to admit them. In addition, there is a particular reluctance noted by a number of local authorities on the part of admission authorities to admit any child in Year 6 (Y6) or in key stage 4.

59. I asked this year for the numbers of children admitted in year. The numbers provided to me cannot, I am afraid, give an entirely accurate picture. Fifteen local authorities had no data on in year admissions to secondary schools for 2016/17 and 14 had no such data for primary schools. Six could only provide incomplete data because they did not co-ordinate in year admissions or did so only for community and voluntary controlled schools. That said, most local authorities were able to provide information about the total numbers of children admitted to schools in their areas outside the normal admissions rounds for the academic year 2016/17 and for the seven months between 1 September 2017 and 31 March 2018. It would be wrong to assume that to add five twelfths to the seven months figure for 2017/18 would create a reasonable 12 months estimate as the majority of in year admissions take place in the autumn and spring terms. It was not possible to ask local authorities about the whole of the academic year 2017/18 as the Code requires local authority reports to be submitted by 30 June. Table 8 provides the totals provided to me for in year admissions.

**Table 8:** The number of children reported by local authorities<sup>9</sup> as admitted to school in year

|                         | 1 September 2016 to 31 August 2017 | 1 September 2017 to 31 March 2018 |
|-------------------------|------------------------------------|-----------------------------------|
| Primary aged children   | 261,956                            | 218,981                           |
| Secondary aged children | 102,083                            | 92,589                            |
| Totals                  | 364,039                            | 311,570                           |

60. The number of in year admissions varies significantly from local authority to local authority. The two smallest local authorities and one other (a large authority) did not provide any figures for numbers of in year admissions. In the case of the smallest local authorities, there may have been no in year admissions. Of those who did provide figures, the numbers of reported in year admissions ranged from a few hundred to over 11,000.

61. Table 9 shows the trend in numbers of in year admissions over time. It is also based on partial information as from September 2013 local authorities were no longer required to co-ordinate all in year admissions. Table 9 suggests that the number of

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<sup>9</sup> Not all local authorities were able to provide answers to these questions and some were only able to provide partial answers or estimates.

in year admissions has reduced slightly in that period but this could reflect an increasing number of local authorities with no or partial data.

**Table 9:** The number of children as reported by local authorities<sup>10</sup> admitted to school in year between 2013 and 2018

| Year               | 2013/14 | 2014/15 | 2015/16 | 2016/17 | 2017/18 (seven months only) |
|--------------------|---------|---------|---------|---------|-----------------------------|
| Number of children | 379,813 | 380,053 | 393,479 | 364,039 | 311,570                     |

62. I asked for the main reasons for in year admissions and, as one would expect, these vary from area to area. House moves, mainly into an area but also from one address to another within the same local authority area, were the most common reason given. One local authority told me that between a half and a third of in year admissions were from children newly arrived in this country. Those local authorities affected by large movements of children into their area described some of the challenges they faced. I note that a number of these are wider than that of finding enough school places for newcomers. Local authorities told me:

- a. it is hard to predict if and where demand will arise;
- b. it is challenging finding places close to new arrivals' homes as families coming from outside the area may move to where their communities are, not necessarily where there are school places;
- c. some families are moved by another local authority seeking cheaper housing and these families can be adrift from their support networks which makes it harder for them to settle;
- d. in some areas office blocks are being converted to flats and to accommodate families. However, the buildings are often in locations where there are limited community facilities including schools;
- e. some families need considerable support if, for example, they do not speak much or any English. Refugees and asylum seekers may need particular support; and
- f. some children coming from abroad present with complex educational needs that may not have previously been identified, assessed or addressed.

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<sup>10</sup> Not all local authorities were able to provide answers to these questions and some were only able to provide partial answers or estimates.

63. Other than children moving into an area and clearly needing a school near their new home, local authorities gave three main reasons for why a school place was needed in year. The first of these was that parents sought a place at a new school because the existing school was raising concerns about the child's attendance or behaviour and seeking to bring about improvements in these. In some such cases, parents did not wish to engage with the school to address concerns but instead opted to remove the child from the school sometimes before seeking a place elsewhere and, it was suggested, without considering the consequences for the child. The second reason was parental dissatisfaction with the school. This particularly related to concerns that the child was being bullied and this was not being addressed adequately by the school or that the child was making insufficient progress because of the quality of teaching and learning and/or the child's special educational needs were not being met. The third reason was reported as encouragement by schools to parents to remove a child as an alternative to possible exclusion, including permanent exclusion. As one local authority said, "*Some parents tell us that they have been 'advised' by their current school that a new start at another school – or even elective home education – might be a good idea.*" I will consider elective home education in this context below in this report. A much smaller proportion of in year admissions was reported to flow from parents continuing to seek a school they had not been successful in gaining a place at in the normal round or seeking to move schools following an adverse Ofsted judgement.
64. A large majority of local authorities, including some of those who do not co-ordinate any in year admissions, pointed out, as in previous years, the benefits of mandatory co-ordination of in year admissions by local authorities. I reported in detail on this matter in last year's report, so will here only give the main reasons behind the arguments put to me, which were that:
- a. some schools do not properly apply their oversubscription criteria to in year applications for admission. The suspicion appears to be that children perceived to be likely to be an asset to the school will be told a place is available and others, who are more likely to be vulnerable, are most likely to be told by some schools that there are no places;
  - b. some schools do not follow the required processes when they refuse a place to a child including not offering the right of appeal, failing to offer to put the child's name on a waiting list or not informing the local authority that the child is seeking a place. This can lead to children being out of school for prolonged periods of time with the attendant risks to wellbeing and education;
  - c. the process is simpler for parents if the local authority co-ordinates admissions as there is a single point of contact, one application, preferences for more than one school can be expressed and there is one offer made in an impartial and transparent manner. The alternative can be multiple applications and considerable delays as each school makes a decision. I was told that in most

cases children, particularly the vulnerable, will be admitted more quickly if the local authority co-ordinated in year admissions; and

- d. it is a more efficient use of resources to have a trained and experienced team co-ordinating admissions rather than each school trying to develop this expertise; the most popular schools will have the most applications but are less likely to admit many pupils in year. Linked to this, some local authorities pointed out that their staff are available all year (other than on public holidays) whereas some school based staff may not be available in all school holidays.

65. One large local authority said that it did not think it was practical for it to co-ordinate all in year admissions. A small number of local authorities made the following points giving the disadvantages of their co-ordinating in year admissions. These were that:

- a. the local authority could not afford to co-ordinate in year admissions;
- b. some children could be admitted more quickly if they went directly to the school; and
- c. it was confusing for parents to have a mixed economy where they applied directly to some schools and through the local authority for other schools. Some local authorities said that they did not co-ordinate any in year admissions for this reason.

66. Three local authorities have no community or voluntary controlled schools and 42 local authorities have no community or voluntary controlled secondary schools. Of the remainder, those who responded to this question reported that:

- a. 119 local authorities co-ordinated in year admissions to their **community and voluntary controlled primary schools** and 22 delegated this to schools;
- b. 85 local authorities co-ordinated in year admissions to their **community and voluntary controlled secondary schools** and 21 delegated this to schools.

67. For voluntary aided, foundation and academy schools:

- a. 107 local authorities co-ordinated all or the majority of in year admissions for **primary schools** and 30 local authorities did not co-ordinate any of these; and
- b. 108 local authorities co-ordinated all or the majority of in year admissions for **secondary schools** and 30 local authorities did not co-ordinate any of these.

68. The evidence is therefore that local authorities co-ordinated in year admissions for the majority of schools. I asked how well the needs of particular groups were met through in year admissions and table 10 provides a summary of the responses.

**Table 10:** Summary of responses re specific groups of children and how well served they are by in year admissions<sup>11</sup>

|  | Not at all | Not well | Well | Very well | Not applicable |
|--|------------|----------|------|-----------|----------------|
| Looked after children  | 0          | 2        | 41   | 108       | 0              |
| Children looked after in other local authority areas <sup>12</sup> | 0          | 20       | 84   | 42        | 5              |
| Previously looked after children                                   | 0          | 1        | 49   | 100       | 1              |
| Children with a statutory plan for SEND                            | 0          | 4        | 56   | 91        | 1              |
| Children with SEND but no statutory plan                           | 0          | 10       | 85   | 53        | 3              |
| Other children   | 1          | 6        | 79   | 57        | 3              |

69. As table 10 shows, most local authorities reported that looked after children and those with SEND were well served when they needed a place in year. Local authorities reported more problems when looked after and previously looked after children needed to find a place in a school in a different local authority area. While I was told of instances of local authorities working well together in the interests of the children concerned, I also heard about disputes over who should pay for any special educational needs assessment required and confusion over responsibility for making applications for places. There were particular concerns raised by a number of local authorities where significant numbers of children from other local authority areas had been placed with foster carers in that area. This was fuelled by the availability in some parts of the country but not others of foster carers (perhaps related to the cost of housing). It could lead in turn to concentrations of looked after children from other areas in particular schools which some schools were reported as finding very hard to manage.

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<sup>11</sup> Figures do not always sum to 152 as not all local authorities responded to all questions

<sup>12</sup> This refers to cases where a child is looked after by the reporting local authority but placed in care in a different local authority area.

70. Most local authorities judged that the needs of children with a statutory plan for SEND who needed a place in year were well met. However, one, which did not think they were well met, said, *“Current arrangements, under the SEN Code of Practice, for the admission of children with EHCPs “in year” do not serve children well. The formal consultation period and lengthy communications that are often necessary with schools, may result in vulnerable children being out of school for extended periods of time.”*
71. A number of local authorities said that some schools were reluctant to admit children with SEND but without statutory plans in year. I was told that this was largely due to schools’ concerns about the resources needed to meet children’s needs. Such reluctance could lead to delays to admissions with children remaining out of school in this period. Local authorities sometimes used the fair access protocol (the protocol) to expedite admissions in these circumstances. As I note above, I was told that some in year admissions were sought as the parents believed the school that the child was attending was not adequately meeting the child’s special educational needs. In addition, one local authority described their experience, shared by others, of receiving, *“high levels of applications in the main from families who are newly arrived in the UK. There are a number of children who are ...new to the UK who clearly display special needs but they do not have any documentation or statement to support their needs.”*
72. A number of local authorities have reported this year that some admission authorities have said that they do not have **places available in a year group** when the local authority believes that they do. In the normal admission rounds, admission authorities cannot refuse a place if there are fewer children than the PAN set for that year group.<sup>13</sup> Many admission authorities will then treat that number as indicating an upper limit on the school’s capacity for that cohort as it progresses through the school. Thus if the PAN were 120 and the year group has 115 children, the school will consider it has five available places. If the year group has 120 children, then the school will consider it has no spare places. However, the particular concern expressed by local authorities related to admission authorities claiming that their capacity for certain year groups was, in fact, lower than that indicated by the PAN for the relevant year of entry. In the example of a PAN of 120, this might involve a school with 110 children in Year 10 or 11 saying that it had no more capacity in those year groups. For ease of reference I have referred to this approach as ‘capping’ numbers. In fact, parents can apply for a place at any school at any time and a place can be refused only if the admission of the child would cause prejudice to the provision of efficient education or the efficient use of resources. While the law does not allow an admission authority to argue that there could be prejudice below PAN in a normal year of entry and keep places empty, the

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<sup>13</sup> The only exception to this being grammar schools which can keep places empty if not enough children who meet the required ability standard apply.

PAN applies only to the normal year of entry. What will amount to prejudice outside such years will depend on the facts of the case. For an in year application, an appeal must also be offered and, of course, particular laws apply in the case of infant class sizes.

73. Broadly speaking, local authorities were sympathetic and supportive of schools where there was a sound rationale for setting a lower admission level for other years than the PAN for that cohort would have suggested. For example one said, *“a school has a PAN [at Y7] of 210. In Year 9 actual pupil numbers are around 150. The school’s funding is therefore less than anticipated and they must arrange staffing and curriculum accordingly around a five form model to deliver “efficient use of resources”. If an additional 20 pupils were routinely allocated in-year to create a year group of 170 the school would not be sufficiently staffed to cope and would not be in a position to set up an additional class because funding would not be immediately available. This would result in larger classes and complications for the curriculum model.”*
74. In some areas there were sufficient surplus places to accommodate those moving into an area so that the local authority would not challenge the use of ‘capping’. However, about a third of local authorities said that ‘capping’ was being used by some schools, not because the admission of children would cause challenges for budget and/or curriculum management, but selectively to allow the admission authority to admit only children whom it felt would be an asset to the school. As one local authority put it, *“It is mainly an issue for secondary schools where the school does not want to admit certain children who do not meet the criteria for fair access, but are perceived by the school to be potentially challenging.”*
75. Several local authorities commented that a benefit of the local authority co-ordinating in year admissions in this context was they would know the numbers in schools, who was applying and what the outcomes were so were in a position to address any problems. In contrast one explained, *“Many of these (own admission authority) schools with vacancies can take a considerable time to consider an application and in some cases advise they are unable to offer a place, the reasons are mainly due to the additional support the student would require, safeguarding concerns, the age group i.e. Yr10/11 or English as an additional language needs. One academy trust does not share their migration or vacancy data and therefore we are unable to ascertain where vacancies exist within these schools.”*

## Fair access protocols

76. In their reports for 2017 several local authorities raised concerns about what they saw as inappropriate reliance by schools on paragraph 3.12 of the Code. Paragraph 3.12 provides that *“Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it must refer the case to the local authority for action under the Fair*

*Access Protocol. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children".* Around 40 local authorities said growing numbers of schools, mainly secondary schools, were reluctant to admit children and were citing paragraph 3.12 – including where the school did not have a particularly high proportion of children with challenging behaviour or previously excluded children. About the same number of local authorities said that they had no concerns that schools in their area were acting in this way. Where there is a problem, some local authorities see the fair access protocol (the protocol) as the solution. One, for example, said that any misuse is, *"easily rebutted by reference to protocol which clearly defines 'challenging behaviour.'"* Another local authority reflected, *"Referrals to the In Year Fair Access process can be contentious because the criteria for meeting the threshold for a referral are not delimited: there is no specific definition of what constitutes 'hard to place' children because the circumstances of schools and children are multifaceted. Consequently many local authority In Year Fair Access protocols acknowledge this and provide examples of common circumstances of what constitutes 'hard to place' but in the interests of meeting the needs of the most vulnerable families in our communities acknowledge 'other circumstances' as a criteria. The pragmatic view is that any child a school does not like the look of constitutes a criterion for In Year Fair Access."*

77. Some children seeking a place in year will fall within the scope of the protocol that must be agreed with the majority of schools in the local authority's area. The purpose of the protocol is to make sure that, outside of the normal admissions rounds, unplaced children, particularly the most vulnerable, are offered a place at a suitable school as quickly as possible. All local authorities, bar three, confirmed that they had an agreed protocol. One of the remaining three areas has only one school and in the final two there is a protocol agreed with secondary schools and a protocol is being agreed with primary schools. Many local authorities described arrangements for regular review of their protocol and the quality assurance mechanisms in place in partnership with schools. Five local authorities said that as no children had been considered through the protocol they could not make a judgement as to its effectiveness.
78. The Code lays down those groups of children who **must** be covered by the protocol as a minimum but it is clear from what has been said to me that beyond this minimum the coverage of protocols varies significantly from area to area. In some areas, the numbers recorded as admissions through the protocol are very low. However, this may not reflect the number of children seeking places and needing intervention or support from the local authority to secure a place. At the other extreme, in each of two unitary local authority areas, over 1,000 children were admitted through the protocol in the year to 31 March 2018. It is not therefore possible to make robust comparisons of data either across local authorities or across years as the data reflects such a range of practices in the coverage and use

of protocols. I should emphasise that I make no comment on appropriate practice. That is a matter for each area, provided the requirements of the Code are met.

79. There were requests from some local authorities that children considered under the protocol should be added to those groups of children who are an exception to the infant class size regulations. Some local authorities argued that because such children were not excepted children, this made it harder to secure their admission to schools when many already had 30 children taught by each teacher in their infant classes.
80. I was glad to note that many local authorities described very positively the work of the fair access panels in their areas. These were said to work collaboratively and openly, with schools willing to share information and to challenge each other in a frank and fair way. Several panels routinely involved other agencies. Some had access to budgets that could be used to support schools admitting particular children. One local authority was able to describe how the number of children missing education had been significantly reduced following changes to the fair access panel processes which meant children were out of school for less time. It is clear to me that much good work goes on under the auspices of fair access panels to try to ensure that children remain in and are given the opportunity to succeed in mainstream education.
81. However, there were also problems reported to me regarding the operation of fair access panels and the underpinning protocols. These included:
  - a. the length of time it took to negotiate the admission of some children;
  - b. too many children remaining in alternative provision for too long, including cases where children had been allocated a mainstream school place through the protocol but the school concerned remained unwilling to admit or delayed admission;
  - c. the difficulties in achieving the admission of children in Y6 and, particularly, key stage 4;
  - d. delays in getting information on some children from other local authorities to allow the panel to make an assessment as to the right school for the child; and
  - e. the refusal of some schools to engage fully or at all with the protocol processes. In such cases, schools might simply fail to respond to enquiries or seek to make the process more protracted by asking for further information. They might also simply refuse to accept a decision by the panel and by extension refuse to admit a child on the panel's recommendation. I am told that when this happens it is not unusual for a local authority to approach another school to prevent the child being out of school for a prolonged period.

82. This year I asked what happened to those children for whom a referral to the fair access panel for consideration under the protocol failed to secure a school place. Some said that a place was invariably found. Others said children were placed in, or continued in, alternative provision. For some this might be appropriate and I was also told of use made of placements at Colleges of Further Education. In some cases there was frustration expressed that children whom local authorities believed were suited to mainstream school were in alternative provision for too long. Where children were unnecessarily in alternative provision this in turn might mean that alternative provision was not available to those children who did need this.
83. Overall it appears that protocols function well in most areas with schools and local authorities working together to secure places for those who as the Code says have not “*secured a place under in-year admission procedures.*” Regrettably, however, it would also seem from local authority reports that some admission authorities do not abide as willingly as they might by the Code’s requirement that they “*participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly.*”

### Directions to admit

84. In some circumstances where a child needs a school place, the local authority can **direct** certain maintained schools for which it is not the admission authority to admit the child or can ask the Secretary of State to direct an academy to admit a child. About one third of all local authorities reported using these powers in the financial year 2017 - 2018. There were far fewer comments received this year with regard to directions but threaded through many reports were concerns over how long directions could take, particularly a request for a direction for admission to an academy.

**Table 11:** Number of directions reported by local authorities to have been made in the year to 31 March 2018.

|           | Local authority directions for a child not looked after | Local authority directions for a child looked after | Local authority directions in other local authority areas for a child looked after |
|-----------|---|---|--|
| Primary   | 10  | 7   | 1  |
| Secondary | 20  | 5   | 7  |
| Total     | 30  | 12  | 8  |

**Table 12:** Number of requests for directions reported by local authorities to have been made to the ESFA in the year to 31 March 2018<sup>14</sup>.

|           | Requests by local authorities that ESFA make a direction for children not looked after | Children admitted following a direction by the ESFA | Requests by local authorities that ESFA make a direction for children looked after | Children looked after admitted following direction by ESFA | Outstanding as at 31 March 2018 |
|-----------|--|---|--|--|---------------------------------|
| Primary   | 7  | 7   | 2  | 1  | 1                               |
| Secondary | 22   | 15  | 10   | 11   | 7                               |
| Total     | 29   | 22  | 12   | 12   | 8                               |

85. Tables 11 and 12 show that overall there were 84 directions to schools to admit a child. Around ten local authorities commented that the sending of an ‘intending to direct’ or ‘intending to request a direction’ letter normally led to a school admitting the child in question. One local authority said that there was around one direction needed for every seven ‘intending to direct’ letters. Some local authorities commented that they generally found it unnecessary to resort to directions and attributed this to the good relationships they enjoyed with schools in their areas.

### Elective home education

86. Every local authority answered the question about the number of home educated children they knew of in their area. The total number of children local authorities reported as being electively home educated was 52,770 children across all 152 local authorities as on 29 March 2018. However, parents are not required to register their children as electively home educated so this number will be fewer than the actual total of home educated children.

87. One hundred and twenty local authorities commented on elective home education. While one local authority told me that, “*The majority of cases which are EHE (electively home educated) have elected to do so to suit their own individual lifestyle choice,*” such comments were in the minority. They were distinctly outweighed by others raising concerns that the education being provided by these means to at

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<sup>14</sup> There may have been requests for directions outstanding from before 31 March 2017. These will affect the figures so that it is possible, for example, to record more directions to admit than requests for directions.

least some children in their areas was not appropriate and not in the best interests of those children.

88. Many local authorities welcomed the call for evidence made by the DfE between April and July this year and looked forward to the outcome of the consultation on the draft guidance for parents and local authorities. Several local authorities referred to increases of between 40 to 70 per cent in recent years in the numbers of children electively home educated. One local authority had registered an additional 100 children in the previous month alone. Another said that it had received over 1,000 new registrations in the academic year to date (28 June 2018) and that, "*many of these are instantly identifiable as inappropriate.*"
89. I was told by local authorities that parents had given the following reasons for choosing to educate their children at home:
- a. failure to secure a place at their preferred school. This can mean that there are higher numbers of children electively home educated at the start of the autumn term and that the numbers fall as places become available at the preferred school or another school that the parents consider suitable. One local authority estimated that this accounted for nine per cent of those being electively home educated in its area;
  - b. a belief that removing a child from school to be electively home educated will mean the child then has a better chance of getting into another and more preferred school;
  - c. seeking to avoid a potential exclusion of their child and/or prosecution for poor attendance. Some local authorities said that some parents told them that they were advised by the school to take this step to avoid their child being permanently excluded;
  - d. worries about their child's unhappiness at school, most commonly related to bullying;
  - e. concerns that special educational needs were not being met;
  - f. concerns about the standard of education provided (an adverse judgment by Ofsted could trigger this); and
  - g. anxiety (amongst older students) about school.
90. Local authorities told me that they were most concerned about children who were removed from their school either because the school, for good reasons, was seeking to work with parents to address a child's poor behaviour or attendance or because the school had suggested that the child be electively home educated rather than be excluded, perhaps permanently. These comments echo the reasons local authorities also give for parents seeking a different school in year.

91. Local authorities were clearly worried that many of these children were unlikely to receive sufficient education at home and that any existing problems were likely to be exacerbated. One local authority told me that 78 per cent of its unplaced children were those seeking to return from what was ostensibly elective home education. In a story echoed by other local authorities, one said. *“it is reported by parents that they have been ‘coerced’ to become electively home educated with some reported instances of schools preparing a standard letter for parents to sign advising of their intention to electively home educate. Once these parents realise the implications and requirement to home educate they can find difficulty in securing a school place.”* I was told that that there tended to be an increase in moves towards elective home education during the key stage 4 years.
92. One local authority said, *“It is felt to be too easy for parents to elect for Home Education. This is often done by parents who have no idea of what Home Education involves, often done in haste after a minor falling out with the school.”* I was told that some schools, secondary schools in particular, are reluctant to admit children through in year admissions who have been electively home educated. This is particularly the case for children approaching or in key stage 4.
93. Against this background, I was very interested to read about actions taken by local authorities to ensure: first, that children were not removed from school in haste; second, to support families who were home educating and to safeguard children; and finally to try and ensure a smooth return to a school if necessary. Local authorities told me of arrangements to help schools to work with parents so that the parent does not decide to remove his or her child and to dissuade schools from encouraging parents to remove their children. Similarly, I was told of efforts to ensure parents were informed about the reality of home educating a child and encouraged to think carefully before taking this step. Local authorities also described measures – including multi-agency working – to support families, to keep in contact with home educating parents and to safeguard the children. Finally, local authorities reported arrangements to ensure that children returning from home education could be considered quickly by fair access panels or otherwise found a school place. I noted a tendency to consider that children should return to the school they had been withdrawn from. There may indeed be good reasons for this; but it cannot be allowed to cut across the right for a parent to seek a place at any school.
94. It was clear to me that many local authorities believe that a requirement for home educating parents to register with the local authority would do much to safeguard children. One local authority referred to families moving into the area and no-one knowing that they were there because the children were being home educated.
95. Looking to the future, some local authorities argued for a mandatory cooling off period before a parent could withdraw his or her child from school possibly coupled with an entitlement to return to the same school within a specified period. It was felt that this would mean that parents could not take hasty decisions and that schools

would not wish to see children withdrawn if it was likely that they would exercise a right to return. I should say that local authorities did also recognise the important right of parents to do what they think is right for their child. As one said, *“No parent should feel that they have no choice but to home educate if a school is not meeting their child’s needs. However, every parent has the right to home educate and the local authority want to ensure that both factors are adequately supported.”*

## Appendix 1 – The role of the OSA

96. Adjudicators exist by virtue of section 25 of the School Standards and Framework Act 1998. They have a remit across the whole of England. In relation to all state-funded mainstream schools, other than 16–19 schools, adjudicators rule on objections to and referrals about determined school admission arrangements. In relation to maintained schools, adjudicators: decide on requests to vary determined admission arrangements; determine referrals from admission authorities against the intention of the local authority to direct the admission of a particular child; decide some school organisation proposals; and resolve disputes on the transfer and disposal of non-playing field land and assets. The adjudicator can be asked by the Secretary of State for Education to give advice on requests from local authorities that an academy should be directed by the Secretary of State to admit a particular child.
97. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. They look afresh at cases referred to them and consider each case on its merits in the light of legislation, statutory guidance and the Code. They investigate, evaluate the evidence provided and determine cases taking account of the reasons for disagreement at local level and the views of interested parties. Adjudicators may hold meetings in the course of their investigations if they consider it would be helpful, and could expedite the resolution of a case.
98. Adjudicators are independent of the DfE and from each other. All adjudicators are part-time, work from home and take cases on a 'call-off' basis, being paid only for time spent on OSA business. They may undertake other work when they are not working for the OSA provided such work is compatible with the role of an adjudicator. They do not normally take cases in local authority areas where they have been employed by that authority or worked there in a substantial capacity in the recent past. Nor do they take cases where they live or have previously worked closely with individuals involved in a case, or for any other reason if they consider their objectivity might be, or be perceived to be, compromised.
99. In September 2017, there were 12 adjudicators, including the Chief Adjudicator. Two adjudicators completed their terms of office during this reporting year so there were ten in post at 31 August 2018. Adjudicators are supported by five full-time equivalent staff based in the DfE's Darlington office. The Secretary to the OSA leads these staff well and they are much appreciated by the adjudicators for their hard work, knowledge, efficiency and good sense. Each year the staff work effectively to manage a workload which varies across the year, peaking in the summer when nearly all admissions cases have to be dealt with.
100. The OSA's costs in the financial year April 2017 to March 2018 rose compared with the previous financial year. The main reason was the higher number of cases in the 2017/18 academic year. Along with many other bodies, we also incurred some

costs in preparing for the new General Data Protection Regulation. More details of OSA costs are given in Appendix 2.

101. The OSA receives legal advice and litigation support as necessary from lawyers of the Government Legal Department (GLD) and from barristers who specialise in education law. Adjudicator determinations are checked before publication by the Chief Adjudicator and, where appropriate, by GLD solicitors and/or by barristers. Determinations do not set precedents and each case is decided in the light of its specific features and context alongside the relevant legal provisions. Determinations are legally binding and, once published, they can be challenged only by judicial review in the Courts. In this reporting year, there were no applications for judicial review of adjudicator decisions and thus no determinations were challenged.
102. At the completion of each case, the OSA seeks feedback from all involved on how the matter was handled. This year 169 feedback forms were issued and 89 responses received. The great majority of those who responded were satisfied with the service provided by the OSA staff and by the adjudicator assigned to the case and felt that they understood our processes and were kept well informed of the progress of their case.
103. We received one complaint. This concerned the effect of a determination on other admission authorities using the same selective testing arrangements and suggested that the determination had not addressed all the points made by the objector. We responded explaining that each determination is specific to the admission arrangements complained about; it does not and cannot apply to admission arrangements determined by other admission authorities for other schools. We also confirmed that all points made to adjudicators were considered and taken into account unless they related to matters outside the adjudicators' jurisdiction.
104. We received seven requests for information that cited the Freedom of Information (FOI) Act. I note that in some instances those seeking information make requests citing the FOI Act when we would in fact be willing and able to release the information sought in response to a simple request. In one case, we did not release all the information requested as this was subject to legal professional privilege and hence exempt under section 42 of the FOI Act. In three cases we did not hold the information requested and in the remaining three we released the information requested (redacted as necessary to comply with data protection requirements).

## Appendix 2 - OSA expenditure 2017-18 and 2016-17\*

| Category of Expenditure       | 2017-18<br>£000 | 2016-17<br>£000 |
|-------------------------------|-----------------|-----------------|
| Adjudicators' fees            | 388             | 329             |
| Adjudicators' expenses        | 19              | 16              |
| Adjudicator training/meetings | 47              | 48              |
| Office staff salaries         | 162             | 160             |
| Office staff expenses         | 4               | 5               |
| Legal fees                    | 14              | 36              |
| Judicial review costs         | 0               | 0               |
| Administration/consumables    | 1               | 1               |
| <b>Total</b>                  | <b>635</b>      | <b>595</b>      |

\*Information relates to financial years 2016-17 and 2017-18. The report covers the academic year 2017/18.

## Appendix 3 – Table Index

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**Table 2:** [Variations to admission arrangements](#)

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Office of  
the Schools  
Adjudicator

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