



**Secondary school admissions in England:
Admission Forums, local authorities and schools**

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Executive summary

This report presents the findings of the second part of a research project commissioned by the Research and Information on State Education (RISE) Trust with funding from the Esmée Fairbairn Foundation. The first part of the research project, published in March 2009 (West et al., 2009) provided an analysis of secondary schools' admissions criteria and practices in England in light of the new legislative and regulatory context. The second part of the research, reported here, set out to provide some examples of how Admission Forums and local authorities have responded to recent changes in the law relating to secondary school admissions. Once again the main focus is on admissions criteria and practices.

In the first ten years in which Admission Forums may have operated the policy environment has changed substantially. Forums have been made compulsory and their membership, powers and reporting arrangements have been modified. Meanwhile, School Admissions Codes have been issued at frequent intervals (1999, 2003, 2007, 2009) and arrangements for the policing of school admissions have been substantially strengthened. However, the lack of formal powers for Admission Forums has been a constant feature.

For this element of the research study we adopted a case study approach, focusing on admission arrangements and the operation of Admission Forums in five local authority areas. The five case study areas varied in the proportion of schools that were their own admission authority and whether objections relating to school admission arrangements had been referred to the Office of the Schools Adjudicator. The five authorities comprised two two-tier authorities (Rural Shire and Semi-Rural Shire), one London borough (Capital Borough) and two single tier authorities (Provincial City, Unitary Town). Interview and documentary evidence was collected in each case study area. In each area interviews were carried out with a local authority officer responsible for secondary school admissions (five interviews) and with a member of the local Admission Forum (five interviews). Interviews were also carried out with secondary school headteachers (five interviews). The Department for Children, Schools and Families also provided written answers to questions posed by the researchers.

- We identified five roles that may be played by Admission Forums in relation to local admissions: a leadership role, a symbolic role, a scrutiny role, a perfunctory role and an expert role.
- In a small authority, the Forum had performed a leadership role, attempting to ensure local admissions arrangements complied with mandatory requirements and were not unnecessarily complex. In addition, the Forum had ensured banding arrangements for some local schools were co-ordinated.
- A symbolic role was reported to be played by the Forum in an area with many conflicts relating to school admissions. The Forum, which was sometimes attended by members of the public and local campaigning organisations, gave an opportunity for campaigning parents to forcefully express their views on local admissions arrangements.
- A scrutiny role was exemplified by one Forum in which local schools and local authorities' compliance with aspects of the School Admissions Code had been examined.
- Another possible role for Admission Forums was identified as a perfunctory role, meeting mandatory duties but making little other contribution to local admissions arrangements.

- Finally, Forums could play an expert role, providing advice and guidance to local schools and the local authority.
- A guidance note issued by the DCSF following the publication of the 2009 School Admission Code identified three changes to the operation of Admission Forums: a change of membership, a change of reporting and a change of focus. Interviewees were asked about these changes.
- Interviewees were asked how they thought changes to the membership of the Forum had affected or would affect its operation. While it was acknowledged by some interviewees that a smaller Forum was preferable it was also suggested that the changes would have little effect on the operation of the Forum, either because the membership would remain the same or because the Forum would continue to be an open meeting attended by non-members of the Forum. However, when Forums were reconstituted under the new regulations, one interviewee had been removed as chair of the Forum (and as a member of the Forum) because of changes to the political composition of the council. Another anticipated being removed for the same reason. Forums remain dominated numerically by educational providers rather than parents.
- The change in reporting arrangements was precipitated by the local authority being required to report annually to the Schools Adjudicator on local schools' compliance with the School Admission Code. In order to reduce possible duplication, the reporting arrangements for Admission Forums were changed. It was reported that three of the five Forums had produced a report previously. Nationally, only eight Forums submitted a report to the Schools Commissioner in 2008 and only 13 to the Schools Adjudicator before the 2009 deadline. Interviewees from two of the Forums that had produced reports suggested that they had not been very informative documents. The third report had however included data relating to the prior attainment profile of the intake to each local secondary school. This was thought to be very useful as there had been fears locally that some schools would 'skim the cream' of the local intake. However, as a result of the local authority having to produce a report for the Schools Adjudicator in 2009 it was not anticipated that the Forum would produce a report in that year.
- The third change is described by DCSF as a change in focus 'from legality to fairness'. The concept of fairness may be understood in different ways. Substantive fairness relates to fair outcomes while procedural fairness relates to fair processes. Fairness may also be understood in relation to notions of justice and what people deserve. Several concepts of fairness may be implicit in the admission policy of a single school such as giving priority to looked after children (based on such children 'deserving' priority treatment), the use of random allocation (procedural fairness) or banding (substantive fairness). In the case of schools with a religious character an additional complication arises because such schools may be seen as performing an additional function – of passing on a faith or helping sustain a faith community. In keeping with this discussion, the School Admissions Code uses the term 'fair' in a variety of different ways.
- In one local authority area, greater procedural fairness was thought to have been achieved through the *legal* force given to the School Admissions Code. Greater substantive fairness had also been pursued through area-wide banding. We suggest that there may be

some scope to increase substantive fairness by looking for means to increase the number of higher preferences met.

- Some interviewees acknowledged substantive fairness was a key concern to parents and that, to deliver fair outcomes, it was necessary to ensure that all schools were acceptable to parents and that there was not a wide variation in the quality of education provided at different schools.
- Nevertheless, it is clear that in relation to secondary school admissions the concept of fairness most often refers to procedural fairness. Interviewees suggested that most schools complied with the admissions code and that admissions procedures were followed in accordance with the rules. However, some evidence was reported of rules being broken, for example in the use of waiting lists. In addition some practices were described that, although they may not break the School Admissions Code, would be unlikely to be encouraged by policymakers. For example, one undersubscribed school was reported to have contacted parents *after* offer day to invite them to meet with the headteacher in the hope of persuading them to reject the offer they had received and instead take up a place at the undersubscribed school. In addition, there was some evidence that some interviewees were suspicious of the motives of schools that set their own oversubscription criteria.
- The increasingly demanding compliance regime was thought to have improved admission arrangements. However we suggest that there are two reasons why ever more intense policing of admissions arrangements is not the best or only means of improving admissions arrangements. The first reason is that as rules become more complex more schools may inadvertently fall foul of them. The second is that problems can arise, including increasingly ‘unfair’ outcomes, without the School Admissions Code being broken. For example, a school that is its own admission authority may choose to opt out of an established system of catchment areas necessitating further and widespread changes to admission arrangements. It was suggested that such problems may be particularly difficult to deal with when many schools are their own admission authority and their oversubscription criteria result in some applicants not receiving an offer for any local school.
- As a result, we suggest that there is a need for oversubscription criteria to be ‘co-ordinated’ within a local area. While it is acknowledged that the achievements of Admission Forums have been limited, we suggest that a duty should be placed on Admission Forums to promote co-ordinated oversubscription criteria. We are not necessarily suggesting that a single set of oversubscription criteria should be applied to all schools in an area, or even to all schools without a religious character within an area. Rather, we are suggesting that, in addition to the requirements that arrangements are ‘clear’, ‘objective’ and ‘procedurally fair’, they should also be ‘co-ordinated’ with the arrangements for other schools in the area. To give two examples, first admissions arrangements for a given area should be able to provide all local children (expressing a preference for a local school) with a place at a local school. Second, admissions criteria for local schools should, collectively, be simple and easily understood by applicants.

1 Introduction

This report presents the findings of the second part of a research project commissioned by the Research and Information on State Education (RISE) Trust with funding from the Esmée Fairbairn Foundation. The first part of the research project, published in March 2009 (West et al., 2009) provided an analysis of secondary schools' admissions criteria and practices in England in light of the new legislative and regulatory context, and that report focused on admissions to Year 7 in 2008. In addition to examining admissions criteria and practices, the report also provided an analysis of the content of supplementary information forms parents may be required to complete in order to apply to particular schools.

The second part of the research, reported here, set out to provide some examples of how Admission Forums and local authorities have responded to recent changes in the law relating to secondary school admissions (including the Education and Inspections Act 2006, the Education and Skills Act 2008, and School Admissions Codes of 2007 and 2009). Once again the main focus is on admissions criteria and practices. The following sections describe how school Admission Forums came into being and the changing role of other key bodies in the admissions process, notably local authorities and the Schools Adjudicator.

1.1 School Admission Forums

School Admission Forums, which were originally recommended by the School Admissions Code that came into effect in 1999, were made compulsory by the Education Act 2002 to provide each local education authority area with a body that would consider school admission arrangements and offer advice to admission authorities. As the White Paper preceding that Act (*Schools Achieving Success*) stated:

[Admission Forums] have where they exist, played a valuable role in making sure existing and proposed admission arrangements serve the interests of local children and parents, and brokering agreements between admission authorities on difficult local issues, such as arrangements for vulnerable and challenging children. We propose to make Forums mandatory, so that all areas benefit, and to give them a key role in advising on and monitoring local co-ordinated arrangements (DfES, 2001, p. 66).

Admission Forums were thus required to promote agreement on admission issues and also to take a particular interest in arrangements for children with special educational needs, looked after children and children who had been excluded from school.

Matters relating to Admission Forums' membership and powers, and also the related powers and duties of local authorities, have however been modified by two subsequent Acts of Parliament and two sets of associated regulations.¹

¹ Education Act, 2002; The Education (Admission Forums) (England) Regulations, 2002; Education and Inspections Act, 2006; The Education (Admission Forums) (England) (Amendment) Regulations, 2007; Education and Skills Act, 2008; The School Admissions (Local Authority Reports and Admissions Forums) (England) Regulations, 2008.

For example, under the Education and Inspections Act, 2006 Forums were empowered to produce reports (with prescribed contents) examining matters relating to local admissions arrangements and also to request information from governing bodies and local authorities in order to compile those reports. In addition they were given the power to make objections to admission arrangements to the Schools Adjudicator and to the Secretary of State. The regulations produced after the 2006 Act also modified the membership of Forums. The second legislative change was made by the Education and Skills Act, 2008.

In December 2007 the DCSF announced it would be monitoring the School Admissions Code, and in April 2008 the DCSF published an analysis of the admission arrangements of schools in three local authorities (DCSF, 2008a). It found that most schools complied with the Code but that a 'significant minority' did not comply, of which a 'disproportionate number' were voluntary aided or foundation schools.

As a result, an amendment was made to the Education and Skills Bill, 2008 at the committee stage requiring local authorities to report annually to the Schools Adjudicator on the legality, fairness and effectiveness of admission arrangements for schools in their area. In addition, it would be consulting on improving Admission Forums, engaging parents and consulting more effectively. Among the options considered in the consultation document (DCSF, 2008b) was a proposal to make Admission Forums voluntary. This was however rejected by a small majority of respondents and the DCSF reported that local authorities, in particular, had taken the view that they should be retained in all areas (DCSF, 2008c).

In short, in the first ten years in which Admission Forums may have operated the policy environment has changed substantially. Forums have been made compulsory and their membership, powers and reporting arrangements have been modified. Meanwhile, School Admissions Codes have been issued at frequent intervals (1999, 2003, 2007, 2009) and arrangements for the policing of school admissions have been substantially strengthened.

However, one aspect of policy relating to Admission Forums has not changed, namely their lack of formal powers. The role of Admission Forums, as set out in the relevant regulations, is summarised in Figure 1.

Figure 1: Role of Admission Forums

The purpose and functions of an Admission Forum are:

To consider and advise on the fairness of admission arrangements and in particular on:

- how far arrangements serve the interests of looked after children, children with disabilities and children with special educational needs
- the effectiveness of the Fair Access Protocol²
- the effectiveness of the co-ordinated admissions scheme³ - any other matters which affect the fair operation of admission arrangements

A Forum must:

- decide who must be consulted about proposed admissions arrangements
- consider and advise on any proposed co-ordinated admissions scheme
- consider any admissions arrangements referred to it for consultation and must consider whether to make an objection to the adjudicator
- consider the local authority's composite prospectus
- consider whether to produce a report

Source: The School Admissions (Local Authority Reports and Admissions Forums) (England) Regulations, 2008

We might therefore summarise the duties of the Admission Forum as threefold. The first is to decide who is to be consulted over local admission arrangements. The second duty is to consider objecting to the adjudicator about any local admission arrangements. The third is to consider and advise on a variety of matters relating to school admissions and, in particular, to consider whether to produce a report on local admissions arrangements.

While Admission Forums must consider whether to refer any local admission arrangements to the adjudicator, very few have done so. In 2007-08, the first full year in which Forums were empowered to make such objections, only four out of 289 objections to the Schools Adjudicator were made by Admission Forums (Office of the Schools Adjudicator, 2008). Meanwhile 158 such objections were made by local authorities.

Similarly, few Admission Forums appear to have produced a report in either 2008 or 2009. In 2008, Forums were able to submit such reports to the Schools Commissioner but only eight were received. In 2009, 13 reports were submitted to the Schools Adjudicator by Admission Forums before the 30 June deadline with a further two expected to follow. (Information relating to the number of reports received in 2008 and 2009 was provided by the DCSF.)

² A Fair Access Protocol sets out procedures for deciding which school will admit certain categories of pupils outside the normal admission round. These categories include, among others, pupils who have been excluded from other schools, children who have moved to the area but where no schools have spare places available, children with disabilities or medical conditions.

³ The co-ordinated scheme is a means of ensuring that although parents may apply to more than one school, applicants will receive, as far as possible, only one offer of a school place and that the offer will be from the highest preference school able to offer them a place.

1.2 Changing roles: Local authority and Schools Adjudicator

It is important to stress that alongside changes to Admission Forums there have been significant changes to the role of local authorities and the Schools Adjudicator. The power of each of these has increased markedly.

Local authorities

The 2002 Education Act required local authorities to introduce a co-ordinated admissions scheme in their area. Under a co-ordinated scheme, each applicant could apply to at least three secondary schools through a common application form on which applicants could rank their preferences. The co-ordinated scheme would then ensure that applicants would receive one offer of a school place from the highest ranked of the schools that were able to offer a place. (If none of the named schools were able to offer a place then the local authority would offer a place at an alternative school that had places available.) Since then, a raft of other changes have taken place.

As was noted earlier, concerns about admission arrangements led to the DCSF investigating the admission arrangements of 570 schools in three local authorities in order to assess their compliance with the School Admissions Code and associated legislation (DCSF, 2008a). Responses from 106 schools found that 96 had arrangements that did not comply with statutory requirements. The most common type of non-compliance was failing to give top priority to looked after children. Other non-compliance related to schools requesting information on supplementary information forms that is prohibited by the Code. Significantly, a disproportionate number of schools with non-compliant arrangements were responsible for their own admissions, namely voluntary aided and foundation schools.

Following on from this, new powers were given to local authorities. In particular, local authorities were given a duty to report on compliance with the School Admissions Code together with the overall impact of the admissions arrangements in their area on fair access. They are also required to send a report to the Schools Adjudicator each year (DCSF, 2009).

Schools Adjudicator

The Schools Adjudicator was introduced by the Labour government in 1998 and was designed to resolve local disputes in relation to, amongst other issues, school admissions. Initially, the Schools Adjudicator had a relatively limited role: objections could be made by admission authorities and in the case of certain existing partially selective arrangements, by parents. Since then the role of the adjudicator has expanded. In particular, since 2007 the Schools Adjudicator has been responsible for enforcing the mandatory requirements of the School Admissions Code and is also required to report annually on fair access to the Secretary of State.

The Education and Skills Act 2008 placed a new duty on the Schools Adjudicator to consider the legality of admission arrangements referred to him via the local authority report. The Schools Adjudicator may also decide whether any arrangements that come to his attention via other means comply with statutory requirements or mandatory requirements of the Code. The Adjudicator may also consider admission arrangements that he considers too complex and may decide to amend or replace them.

Other changes have been made to the powers and duties of local authorities and the Schools Adjudicator. For example, local authorities will be responsible for co-ordinating in year admissions. However, we have chosen to focus on the changes most pertinent to secondary schools oversubscription criteria and to the operation of Admission Forums as these comprise the key focus of our research.

The following section outlines the methods we adopted; we then examine the roles played by Admission Forums, changes to the operation of Admission Forums and the changes to a focus on fairness from a focus on legality. The final section concludes: we argue that a key feature of Admission Forums is their lack of formal powers. Their roles vary between local authority areas. Whilst significant changes have taken place over time, the research suggests that there is a need for a greater collective control over admissions, with the Admission Forum having a role to co-ordinate and administer local admissions criteria and practices to ensure that fragmentation of school admissions is minimised in the interests of parents.

2 Methods

For this element of the research study we adopted a case study approach, focusing on admission arrangements and the operation of Admission Forums in five local authority areas. The five case study areas were selected to ensure variation in the type of authority, the proportion of schools that were their own admission authority and whether objections relating to school admission arrangements had been referred to the Office of the Schools Adjudicator. The five authorities comprised two two-tier authorities (Rural Shire and Semi-Rural Shire), one London borough (Capital Borough) and two single tier authorities (Provincial City, Unitary Town).

The selected local authorities were invited to participate in the research, with introductory letters being sent to Directors of Children's Services requesting participation in the project. It may be that authorities with more active Admission Forums would be more likely to agree to participate in the study and there is some evidence to suggest that this may have been the case. For example, members of Admission Forums in three of the five authorities that agreed to participate stated that their Forum had produced a report in 2007 or 2008. Yet, as was stated earlier, from the country as a whole, only eight Forums submitted a report to the Schools Commissioner in 2008.

Interview and documentary evidence was collected in each case study area. In each area interviews were carried out with a local authority officer responsible for secondary school admissions (five interviews) and with a member of the local Admission Forum (five interviews). In four of the five areas this interviewee was the Chair of the Forum. One interviewee was a member of more than one Forum. Verbal evidence from this interview that related to Admission Forums other than those of the case study areas was included as data for the study. Interviews were also carried out with secondary school headteachers (five interviews). Most of the interviews were carried out in person although a minority were carried out over the telephone.⁴ All interviews were transcribed in full and a qualitative data analysis software package, NVIVO, was used to assist with searches of the data. Interviews were carried out between June and November 2009.

⁴ All interviews were carried out by Philip Noden.

Documentary sources of evidence, including minutes and other documents relating to Admission Forums, composite brochures produced by the local authority, Adjudicators' decisions relating to the case study areas and also key policy documents, such as Admissions Codes, regulations relating to Admission Forums, and primary legislation, were also examined. An approach was made to the Department for Children, Schools and Families, requesting an interview with a civil servant. Although an interview was not granted, the Department did provide written answers to questions posed by the researchers.

3 Roles played by Admission Forums

In presenting our research findings, we begin by discussing the roles played by the Admission Forums. One interviewee, a diocesan representative, sat on four Admission Forums, with oversight of a further two. As this particularly well-placed informant remarked: 'My observation of Admission Forums is that they're all extremely different'. In attempting to describe the roles played by the five Admission Forums, the intention is not to provide a definitive judgement on the role of each but rather to use the cases to illustrate the range of roles that may be played by Admission Forums.

3.1 A leadership role

The Admission Forum in Capital Borough can be seen as exerting a clear leadership role:

I think our Admission Forum has been quite successful in doing sort of low key persuasion rather than 'we'll take you to the Adjudicator'. (Officer)

Even this Forum, which might be seen as the most proactive, was described as having had an inauspicious start:

Before its current focus it was a bit waffly its role, you know, it wasn't a decision-making body as such. But what our one did from the very beginning and – you know we had voluntary aided schools, they all had slightly odd things in their admissions arrangements – but it was a sort of softly, softly approach to try and get them to change. (Officer)

Two subsequent achievements were attributed to the Forum by interviewees. The first related to the use of banding tests by more than one local school.⁵ The Admission Forum was reported to have instigated a single banding test so that pupils did not have to take more than one such test. While this arrangement is recommended by the 2009 Code it is not a mandatory item (paragraph 2.91). The second achievement was organising that test through the local primary schools so that banding was not only applied to a subset of pupils who applied to the relevant schools. While the Forum was described as adopting a 'softly, softly' approach it is worth noting that the minutes record that, in the face of resistance from some schools to this admissions reform, the Forum did make clear its willingness to write to the Secretary of State.

⁵Banding aims to ensure an academically balanced intake to schools either individually or collectively. Children are placed in ability bands based on their performance in a test and places are then allocated so that a school's intake reflects the ability profile. This may be the profile of the local area or alternatively of those applying to the school, to a group of schools or may reflect the national ability profile (DCSF, 2009a).

The Officer interviewed went on to report:

one of the key things that the Admission Forum does – and this is really good – is that there’s always a concern about the academies are going to cream off the best. Each year it [the Forum] asks for Key Stage 2 results for pupils in the secondary schools. And what that shows you is that the popular schools have more able children, but what it certainly does not show is that all those able children are in... the academies. (Officer)

That is, higher levels of prior attainment were more consistently evident in the intakes of popular community and voluntary aided schools than in the intake of the most advantaged academy.

There was evidence that other Forums had, at times, taken on a leadership or initiating role. For example, an interviewee described how, after residents had complained to councillors who were members of the Forum, the Forum had suggested that the sibling criterion be given priority over catchment areas.

Nevertheless, none of the other Forums had been as successful as City Borough in taking a leadership role with local schools. There are perhaps several contextual factors that may have facilitated this. First, there was evidently mutual respect between the Admission Forum Chair and the officer responsible for secondary school admissions. Second, the Chair was a former councillor and indeed, former Executive Member for Education and was therefore very knowledgeable about the local context. Third, there was continuous, single party control of the local authority and the Forum Chair was affiliated to the majority political party. Finally, it was a small authority with a relatively small number of secondary schools. While many of these characteristics were shared by other areas, in no other case were all of these conditions present.

3.2 A symbolic role

A two-tier authority Forum (Semi-Rural Shire) shared several of the characteristics of the Capital Borough Forum but crucially the authority was much larger with more than 40 secondary schools, many of which were their own admission authority. Consequently the collective leadership role offered by the City Borough Forum was much more difficult to achieve. Residents in the area were seen as very active consumers, and campaigns relating to schools were common – at times featuring ‘extremely well-heeled, vociferous and articulate’ pressure groups. While in other areas the main driving force behind change was reported to be either School Admissions Codes or local political leadership, in Semi-Rural Shire it was reported to be public campaigns:

It’s not so much that the Code of Practice has been influential but that the admissions area is overheated and the parents are very minded to campaign about it, feel that they’re told one thing about choice and experience another thing about managed preferences. And so we get a lot of angry debate in this area, maybe so it ever was, but my impression – and I’ve been in the area sort of 20 years now – is that it’s become more and more contentious as the gap between what people feel they legitimately expect and what they then get offered opens up. (Officer)

In this context, the Admission Forum Chair described the role of the Forum in the following terms:

I think it's a release valve for any problems. I mean it's a means by which parents, governing bodies, heads, interested parties, can come and vent their frustration. And make sure that their voice is heard... it's not a meeting I look forward to by the way... But I think it's entirely right and proper that we should have one... for those that want to express an opinion pretty forcefully and gain maybe the support of other people in a like situation or people who potentially might be in a like situation. (Forum member)

As is indicated by the quotation, Admission Forum meetings were open to the public and minutes indicate that attendance could exceed 40. While the officer interviewed suggested this rendered the Forum 'unwieldy' and unsuitable for resolving disputes that were better settled through discussions of three or four people, taking place in private, the officer went on to suggest the Forum provided a 'Parliamentary backdrop' for discussions that actually took place elsewhere.

3.3 A scrutiny role

The role played by the Admission Forum in Provincial City may be characterised as that of scrutineer. The chair and the officer who were interviewed each described how the Admission Forum had acted on particular elements of the School Admissions Code to scrutinise activities in the area. For example, one local school had been closed and replaced by an academy. However, as the management information system was licensed to the predecessor school, no pupil records had been handed on to the academy. As the Chair explained:

The record transfer is part of the Admissions Code and they should be sent within fourteen days... I mean I have to follow it up, you know, it was a legitimate concern raised at the Admission Forum by more than one school... Something went wrong this time, I don't know where it went wrong, but the schools are saying we are having children in Years 8 and 9 transferring at the parents' request and they are not coming with records because [the academy] say they were lost when the other schools went down... Well you don't know if you're receiving children who under normal circumstances you might have the right to say 'no, I can't take this child'... two of them are [National Challenge schools] and so they would have the right not to take some children but they don't have the records. (Forum member)

The chair was again a former councillor and Executive Member for Education. However the majority party in the city had since changed and the Chair believed that the Forum's robust approach to scrutiny may lead to a replacement councillor being found when the Forum was reconstituted (as a result of the new regulations that came into force in February 2009).

Cases had also been pursued through the Forum relating to schools delaying the admission of refugee children because they did not have a school uniform although, as the Code refers to prohibitively expensive uniforms, and not to *having* a uniform as a precondition of starting school, the schools concerned could not be challenged legally.

A similar case was pursued through another Forum although again the interviewee felt the outcome had been unsatisfactory due to the lack of powers available to a Forum and also by

the fact the school concerned was represented on the Forum. An Admission Forum member explained:

A parent complained that the school uniform was too expensive and the Forum has done a huge amount of work, but of course can only monitor the issue in terms of fairness and equity and can't actually make anything other than the mildest of suggestions to the admissions authority about a school uniform. And the writing..., when there's a member of that school on the Forum, is extremely tricky... In that case there was a clear breach in the protocol...The issue had not gone before the governing body. (Forum member)

3.4 A perfunctory role

The role of the Admission Forum of Unitary Town could perhaps be described as minimal. Indeed, one of the interviewees was reluctant to be interviewed because there was little to say about the Forum:

I didn't want to waste your time by meeting you, thinking you were under the apprehension I could help you and in fact I can't really with Unitary Town, because it just monitors the situation... And those figures are properly laid before the Forum in an efficient and timely way by the officers. The Forum doesn't have to ask for them, you know, they're there. (Forum member)

Unfortunately however this limited role was not the result of secondary school admissions in the area being problem free. Despite having relatively few schools, admissions arrangements were very complex with each school having a different admission authority.

The interviewee's appraisal of the Admission Forum was corroborated by the council's response to an unsatisfactory admission process two years before. In summary, the coeducational schools with designated catchment areas did not have enough places for all applicants from within those areas. Consequently, due to the use of a distance criterion as a tie-breaker, a substantial number of children from within the catchment areas did not get places at their higher preference schools and were left facing difficult journeys to an unpopular school. However, in response to this situation, the task of reviewing the provision of school places and their admissions criteria fell not to the Admission Forum but to a specially constituted panel with an independent Chair. When asked whether the officer could imagine the Admission Forum undertaking that task, the officer replied:

Technically yes – it should do. I think Admission Forums work from what we say and suggest to them and they look at it as ticking whether they like it or ticking whether they don't. I'm not so sure that they work as a thinking group...from my involvement I see it as they just want us to present things and they comment. (Officer)

This appraisal of the role of an Admission Forum as somewhat limited was echoed by an interviewee who, as a diocesan representative, attended meetings of four different Admission Forums:

I think at their very best they are – you know, subject to the proviso like being efficiently run, properly chaired, consistently attended – they can provide very helpful and informative discussions. That's at their very best. And there's a lot of 'ifs' there.

3.5 An expert role

Interviewees from Rural Shire drew attention to the value of an Admission Forum providing expertise and valuable suggestions on matters relating to admissions. As with City Borough, it was remarked that the character of the Forum meetings had changed over time:

It's changed a lot, it used to be – even up to a few years ago – just really nobody used to attend, we used to get sometimes three members of the Forum attending, just rubber stamp things really because there were so few of them... but now you know the advice we get is usually quite good. And the debate, you can tell it's better because at one time the Admission Forum meetings would be over in 10 minutes. Now they're much, much longer and they're better and they're people that have an interest in it and... take it very seriously and discuss every point thoroughly... Before you almost got the feeling that people were press ganged into going to the Forum. We never, ever got new representatives from schools on it. Whereas now they're taking a more active role in it and I just think their understanding is better. (Officer)

It should be acknowledged that the role of providing expertise was certainly also reported to be played by several of the other Admission Forums.

Two of the quotations above referred to changes in the character of Admission Forum meetings and, as was noted earlier, legislation, successive School Admission Codes and associated regulations have each modified the operation of Admission Forums. The set of changes arising from the 2009 School Admission Code are described in an Information Note issued by the DCSF as making three main changes: a change to the membership of Forums, a change to the reporting arrangements and a change to their focus (DCSF, 2009b). Each of these changes are considered in this report. In Section 4 we consider the change of membership and the change in reporting arrangements. Section 5 considers the shift from a focus on legality to a focus on fairness.

4 Changes to the operation of Admission Forums

4.1 A change of membership

The 1999 School Admissions Code originally recommended that Admission Forums be established and suggested it was best for membership to be decided locally. Nevertheless, it did state:

As a minimum, the following interests should be represented:

The relevant local education authority or authorities

School governors

Headteachers

Dioceses with schools in the relevant area

Early Years Development Partnerships

Special interests, such as for children with special educational needs, sizeable ethnic minorities

Any local City Technology Colleges

Local parents

Subsequent legislation and regulations were more explicit as to the membership of Forums, and rules relating to the composition of Forums are shown in Table 1. If we consider how the

membership is balanced between educational providers and parents it is immediately clear that Forums are dominated by providers. Parents have always comprised a small minority of members, with only one parent currently required to be a member of the Forum. In addition, while parent members under the 2002 Regulations were ‘parent governor representatives’, and therefore necessarily engaged with political processes relating to local education, under the 2008 regulations the requirement is merely that a parent must be among the members. The DCSF explained that this change was made to increase the opportunities for *any* parent to have greater involvement in the admissions process.

As we also see clearly from the table, the sets of membership rules differed markedly as to the implied size of the Forum. The regulations associated with the 2002 Education Act envisaged a Forum of up to 26 members, of whom up to five could comprise local councillors and up to six could represent the main denominational authorities. The crucial change made under the 2007 Regulations was to allow each school in the local authority area the right to be represented on the Forum. Clearly this had different implications for authorities of different sizes and, as one interviewee remarked:

It was a practical nonsense to say that every school could attend...Every authority went in to a spin thinking how, what venue shall we book? (Forum member)

Yet without such ‘school members’, in its 2002 and 2008 incarnations, the Admission Forum has of course almost inevitably had an in-built majority of members representing ‘own admission authority’ schools – despite the fact that they represent a minority of schools nationally. While this may be appropriate for a body seeking to build a broad consensus between admission authorities it could constitute an obstacle to Admission Forums making referrals to the Schools Adjudicator – importantly, the only matter on which the regulations refer to a Forum taking a vote.

Table 1: The membership of Admission Forums over time, as set out in regulations

Members	2002 – ‘An Admission Forum shall comprise’	2007 – ‘An Admission Forum shall comprise’	2008 – ‘A Forum... must include’
Councillors	1 to 5 (number decided by authority)	As for 2002	1 or 2 (number decided by authority)
Church of England Diocesan Board of Education	1 to 3		1 representative per religion
Nominees of the Roman Catholic Church diocese	1 to 3		
Representatives of other religions (for which there is a local school with a ‘religious character’)			
Community schools	1 to 3 headteachers or governors (number decided by authority)		1
Voluntary Controlled schools			1
Voluntary Aided schools	1 to 3 headteachers or governors (number decided by authority)		1
Foundation Schools	1 to 3 headteachers or governors (number decided by authority)		1
Academies	Number decided by authority		1
City Technology Colleges	Number decided by authority		1
Parents	1 to 3 parent governor representatives (number decided by authority)		1 parent of child aged 2 to 16 at time of appointment
Community members	1 to 3 but not councillors appointed as LEA governors (number decided by authority)		1 (nominated by school, religious and parent members)
School members		All other schools	
Total number of members	10 – 26 (+ number of academies and CTCs)	Dependent on the size of the local authority (may be as many as 600 members for the largest authorities)	No more than 20

Source: The Education (Admission Forums) (England) Regulations 2002, The Education (Admission Forums) (England) (Amendment) Regulations 2007, The School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008

The 2008 regulations however capped the membership of Admission Forums at 20. Interestingly, in one of the smaller authorities, this change was reported to have had little

effect on the membership of the Forum (the only change was a reduction in the number of members representing local academies). In one of the two tier authorities it was also expected to have little effect although for different reasons, as the officer explained:

We won't turn people away at the door, [if] they want to come and discuss something. It's a bit of a moot point whether they're a member of the Admission Forum or whether they're a visitor to the Admission Forum. If it's something of significance they want to discuss. There are no actual votes and nothing is settled by us by a 22 to 18 majority. So it's a place for building consensus. (Officer)

There was certainly a degree of confusion relating to the membership of Forums. For example, two of the five officer interviewees were uncertain as to whether they were actually members of the Forum or not – even though both had attended the Admission Forum regularly and were key providers of information to those Forums and therefore crucial contributors to the functioning of the Forum.

Of course, with the exception of the brief period during which all schools had the right to attend Admission Forum meetings, community and voluntary controlled schools have been under-represented at Forums compared with other categories of school. However, notwithstanding such numerical differences in representation, it was also suggested that the value of the contribution made by individual Forum members could also be a matter of personality and expertise.

However, councillors were the category of members who provoked more discussion from interviewees than any other. In particular, one interviewee suggested that while some Forums are run 'democratically' (in the sense that all members had a voice) others were run more like local authority committees. For example, as the interviewee remarked when asked how Admission Forum Chairs were elected:

even my cynical jaw dropped when [the] councillors strode in and one went straight to the chairman's chair and one went straight to the vice chairman's chair. (Forum member)

It was suggested that inconsistent attendance and the use of alternate members could be particularly unhelpful in this regard. The interviewee went on to remark on having attended six meetings at which the Chair was not present. Interviewees in four of five the case study areas remarked on the importance of councillors who sat on the Forum having some expertise in relation to school admissions.

One pitfall of the politicised nature of Forums identified by one interviewee was that Forums often divided on ideological lines. This was reported to be particularly frequent in relation to academies and indeed, this was at times reflected within the research interviews.

In one of the case study areas the Chair of the Forum (a councillor) had been replaced as part of the process of reconstituting the Forum under the new regulations. Another member of that Forum was dismayed that the Chair had been removed at a meeting not attended by the Chair and with very few other attendees. The meeting had featured an hour long discussion as to whether there should be two or three local authority members (despite the Code stating there should be a maximum of two) led by three councillors, two of whom had not previously attended the Forum.

The erstwhile Chair expressed similar reservations about the other local authority members of the Admission Forum who were reported to have changed frequently and evidently not have understood the issues or processes associated with school admissions.

Similarly in Provincial City where the Chair was likely to cease to be a member of the Forum when it was reconstituted, concerns were expressed that new members should have some knowledge and experience of the education system. Indeed, the Chair expressed relief that one of the likely replacements had recently qualified as a teacher.

The process of reconstituting the Forum had thrown up an interesting constitutional issue relating to an element of circularity in the regulations governing membership. The circularity arises from the fact that the authority appoints the Forum as a whole yet a subgroup of Forum members (members representing groups of schools, religious authorities and the parent member) may appoint a number of members to represent 'the interests of any section of the community'.

The out-going Forum had recommended to the Cabinet that the new Forum should include representatives of both major parties in the city (despite the fact that no proportionality rule applied). Indeed, it had advised that, should the Cabinet choose to nominate two local authority members of the same political party then it would only propose that there should be one local authority member. Presumably the Forum took the view that, as the nomination arrangements concerning local authority members were not specified elsewhere in the regulations, they must be appointed as community members and hence by other members of the Forum.

While the interpretation of the regulations made by the Provincial City Forum may or may not be correct, this case does clearly draw attention to the possibility of reaching an impasse in relation to the membership of Forums. As an officer from another authority commented:

I think whatever the regulations would say, Cabinet will think they can veto the actual membership... they won't see it as a rubber stamping exercise because they're not used to that. (Officer)

The case described above also draws attention to the potential loss of expertise to the Forum arising from changes in the political make-up of the local council.

Notably, both the removed Forum Chair and the Chair at risk of removal were intensely committed to improving school admission arrangements locally and saw great potential benefits from participation in the Forum. The former Chair remarked:

To be absolutely truthful, it's been difficult to get people to attend. The diocese tend to attend... [but] the interest in [the] Admissions Forum...is actually quite limited.

Right, right and why do you think that is?

I don't think people really understand them... I think... the documentation and stuff [is] very much officer-led. It's brought to the Forum and the Forum can change it... I think maybe we've managed to change some of the information that goes out to be better, because I do think the whole process of asking people about choices of school

and saying it's a choice, is actually, you know, is actually quite dangerous, because...we've had four or five year olds having to go in taxis in the morning, because the parents had chosen a school that most parents would know that they would never get their child in to, because they were oversubscribed primary schools. They then don't choose their nearest school. So then what happens is of course they get pushed in to the school that's nearest that's got places... (Forum member)

Yet the quotation also illustrates the tension between using expertise to engage with the detail of admission arrangements (e.g., modifying brochures to try to prevent four or five year olds being taken to school by taxi) and lapsing into partisan rhetoric (illustrated by the phrase 'choice is dangerous').⁶

As was noted above, some confusion has arisen from the School Admissions Code and related regulations relating to councillors being members of Admission Forums. The regulations do however make clear that school representatives may be either headteachers or governors but they may not be governors who were appointed by the local authority and who are also members of the local authority. Thus it seems that the regulations were intended to reduce the influence of council members within Admission Forums. Clearly, however, this attempt to depoliticise Admission Forums has not been entirely successful.

4.2 A change in reporting arrangements

In addition to the recent changes to the membership of Forums, the Education and Inspections Act 2006 and the Education and Skills Act 2008 each made changes relating to powers and duties to report on local school admissions arrangements. In short, the 2006 Act empowered Admission Forums to produce a report on admissions arrangements annually. (As was noted earlier, only eight Forums submitted a report to the Schools Commissioner in 2008.) The 2008 Act however then placed a duty on local authorities to produce a report annually to the Schools Adjudicator.

Documentary evidence relating to Admission Forum Reports suggests that the objectives for the reports, in promoting fair access to educational opportunity, were ambitious. The issues to be covered in reports were set out in the 2007 regulations including, for example:

a) the number and percentage of first, second and third preferences expressed... which were met and the main factors that affected whether such preferences were met...

While a further point identifies the following issue:

c) the ethnic and social mix of pupils attending schools in the area of the authority and the factors that affect this (p. 1)

An information note on Admissions Forum Reports gave further guidance on the issues to be considered. For example, in relation to example a) shown above:

⁶ While this phrasing was used during a research interview rather than an Admission Forum meeting, it is important to note that another interviewee described how Forums could frequently divide on ideological lines, particularly in matters relating to politically contentious issues such as the operation of academies.

- Data should be broken down by school, school type (e.g., by category and faith) and if relevant (e.g., particularly in large shire areas) geographic area.
- Are there any schools which are substantially oversubscribed? Because parents can express multiple preferences first preference or appeal data might best indicate schools which are heavily oversubscribed (The Forum will need to define ‘substantially oversubscribed’ in relation to local factors.)
- Why are other schools undersubscribed? The Forum could consider examination results in comparison with other schools or the effect of catchments etc. Do they have – in the local context – poor behavioural standards? Value added data and GCSE scores could be a useful indicator of whether there are perceived quality issues. Where preferences are lower than might be expected could the condition of buildings be a factor?
- Are there parents resident in any geographical areas who are consistently failing to obtain a preferred school?
- At the same time, are some schools constantly undersubscribed because of the high concentration of schools in an area? Would a review of catchment / priority areas resolve this?
- Are grammar schools drawing in large numbers of applicants? How do their FSM and other deprivation indicators compare with the area in which they are located and other schools in the area? Is there a knock-on negative impact on the social structure / academic quality of secondary schools (e.g., is the intake skewed more towards one ethnic group than might be expected given the school’s location or is FSM in the school higher than in the area?)
- Is there any information which shows that parents are finding the application process complex? Can the admission form be made simpler? Are parents applying on-line?
- Is the choice advice service being used and, if data is available, is it having a positive effect on target parents obtaining a chosen school?
- If lower preferences are offered (4th, 5th, 6th etc, the report should also include the numbers and percentages of these preferences met and the factors affecting them (pp 5-6).

A further 56 bullet points indicate other ‘examples of the type of questions and issues that the Forum should be covering’. The information note also suggests Forums should, where their evidence is not in line with expectations, ‘commission further research, reports or action’ (p. 5).

While several interviewees pointed out how difficult it was for Admission Forums to take action, one also observed that the Forum did not have the power to commission research. While legislation clearly allowed Forums to request information from local authorities and governing bodies it is silent as to who would carry out further analytical work.

Three of the five case study Admission Forums had produced reports in 2007 or 2008, one had not produced any reports and the Chair of the other Forum, new to the role that year, did not know whether reports had been produced. Interviewees from each of the three areas that had produced reports expressed the view that they ended up too data heavy and difficult to interpret. As two Admission Forum members put it:

They were basic information reports; there was nothing controversial in them. (Forum member)

I do think... the reports ended up being really a report of what actually had happened, rather than on some of the fair access stuff... So...you get these fantastic numbers... 90 whatever per cent or whatever of people got their first choice... I do think we need to be analysing [who did not get their first choice and the reasons why] much more, because it is highly damaging for a child at 11 and their parent has made a choice about a secondary school. They [have] then not got [in] to that secondary school and they've been sent to another school and the parents then go in to these massive appeals. And the house probably is humming... with all the reasons why the child shouldn't go to this other secondary school and then ultimately, because of the way the system works, they end up having to go there. And I think what does that child think? Well I'm in a second best school do I want to be here? ...Do I feel comfortable here? And I do think that ...people don't voice some of those things. (Forum member)

The exception to the view that reports were not very informative as was noted earlier, came from Capital Borough where the Forum had initiated reporting of the prior attainment of the intake of each of the schools in the Local authority area. Thus the Admission Forum had commissioned and published an important and informative piece of additional analysis relating to fair access to educational opportunity.

The modification to reporting arrangements introduced by the Education and Skills Act 2008 was to create a duty for local authorities to report on local admission arrangements to the Schools Adjudicator annually, to ensure that reports were made for each local authority area, and to reduce the guidance relating to the content of a Admission Forum report to an analysis of whether admissions arrangements 'ensure fair access to educational opportunity' [18, (1) (a)]. These changes are summarised in Table 2.

The items shown in bold represent matters on which Admission Forums were empowered to respond but are not included in the local authority reports. Thus several of the more discursive items are not required from local authorities - such as the main factors affecting the level of preferences met, the factors that may effect the ethnic and social composition of schools and other matters that might affect how fairly admission arrangements serve the interests of children and parents. Four new compliance items are however added to the list of items on which local authorities are to report.

The content of the annual compulsory local authority report to the Schools Adjudicator is therefore more limited than that envisaged for the (voluntary) Forum reports and they are clearly more focused on compliance with the School Admissions and Appeals Codes.

Table 2: Prescribed content of Admission Forum and local authority reports

2007 regulations – ‘matters that may be included’	2008 regulations	
	Local Authority report ‘prescribed matters’	Admission Forum report
Preferences met and main factors that affected whether such preferences were met		
How far arrangements serve the interests of looked after children, children with disabilities, children with special educational needs	How far arrangements serve the interests of looked after children, children with disabilities, children with special educational needs	How far arrangements and criteria ‘ensure fair access to educational opportunity’
How well Fair Access Protocol has worked and how many children have been admitted to each school under the protocol	How well Fair Access Protocol has worked and how many children have been admitted to each school under the protocol	
Whether primary schools are meeting statutory duties relating to infant class size	Whether primary schools are meeting statutory duties relating to infant class size	
Number of appeals made to the appeals panel within the area of the authority	Number of appeals made and upheld at each school	
	Whether authority and panels have complied with Appeals Code	
	Assessment of the co-ordinated scheme for the coming year	
	Membership of the Admission Forum	
‘other matters’ that might affect how fairly admission arrangements serve the interests of children and parents	Details of ‘any other matters’ that affect the operation of admissions arrangements	
	Statement as to whether schools comply with the Code	
Ethnic and social mix of schools and factors that affect this	Percentage of pupils receiving a FSM in each school	
Any recommendations		Recommendations how to improve fair access

Source: The Education (Admission Forums) (England) (Amendment) Regulations 2007 and The School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008

At the time of the interviews, officers were in the midst of preparing or had just completed their reports to the Schools Adjudicator. Officers were asked if the process of producing a report for the Schools Adjudicator had been a useful one for the local authority. One officer interviewed expressed the view that the process had been a useful one. However this view was not shared by the other interviewees. One replied:

Not desperately. I'm not sure that it's anything other than bland... You know, the report on how in-year fair access is working, says it works reasonably well, but there have been issues, but I don't think that tells them anything they don't know. (Officer)

This point was echoed by other officers interviewed including one who observed that 'all reports are slightly frustrating'. Notwithstanding this general dissatisfaction with producing reports, two reasons were given as to why this report was particularly frustrating. First, although the School Admissions Code makes clear that Admission Forum reports are not intended to duplicate the local authority report, some officers actually stated that they believed the content of the local authority report duplicated either data held elsewhere or policing activities already being carried out. As two respondents when asked stated:

Have you learnt anything from the process or the analysis?

Only that we need to keep our data slightly better. We don't keep our data in the form that they wanted it... but and I don't think it's given them any more data than they could have got from other returns made to the DCSF. The DCSF could have supplied them with the vast bulk of that information. (Officer)

Now the Authority has a new duty to produce a report on...

Yes, which is what I'm just trying to struggle with, it's meant to be in next week...

And how useful is that process for the authority, producing that report? [From your tone] It sounds like not very useful.

...they're already checking our over-subscription criteria by doing that remotely, by looking on our websites and things. So the fact that whether we've had to challenge schools or not, they can see whether they abide by them or not – but obviously if they want us to report on that we can. (Officer)

Another officer explained that the local authority hired someone to write the report to the Adjudicator, describing the exercise as 'governmental box ticking' but went on to give a second reason for finding the report frustrating. This interviewee was not in any way diminishing the importance of the role of the Schools Adjudicator, but rather the value of the process of producing the report and, more importantly, the tendency for the reporting on, and policing of, school admissions to substitute for action to *improve* school admissions arrangements. This is illustrated by the following excerpt:

And how useful was that process [of producing a report] for the local authority?

I think it's useful I'm pleased with the work the adjudicator is doing... I think he's put in a lot of energy about trying to iron out bad practices we've tolerated for years in the [voluntary aided] sector. And trying to get more objective criteria on the table.

And trying to make sure that we don't set a high standard for community schools, but then let others get away with just anything. And I think it's been a better leadership than we've had at some previous times. But I feel we've put a lot of work in to preparing reports for the school adjudicators office and to an extent I suppose I feel that the government's unwillingness to fetter the freedom of some schools, they compensate for by creating ever greater bureaucracy to count the beans. So sometimes it's a bit well we can tell you what the problems are and we can tell you again in more detail, but that isn't the same as addressing the problems. (Officer)

This distinction between monitoring or policing admissions on the one hand and taking action to improve arrangements on the other is one to which we will return later in the report.

One apparent consequence of Local Authorities producing reports to the Adjudicator was to replace or at least largely substitute for the Admission Forum report. While the previous reports had been seen as data heavy and difficult to interpret, in two of the three Forums that had previously produced reports it was anticipated that the scale of the Forum's involvement with the report or the scope of the report would be diminished. For example, in the case of City Borough, whose Admission Forum report had included illuminating data relating to the attainment profiles of secondary school intakes, the production of a local authority report (which would not be required to include that data) was seen to have rendered the Forum report superfluous:

This time our Admission Forum has decided because it's not required to produce the report to... the adjudicator, it's silly doing a separate one. Our Admission Forum's not in conflict with [the local authority] or anything, but it's contributed to the one that we're going to produce. It may change it's mind as the future, all of this has happened very quickly, but for the moment it's not going to produce a separate one. (Officer)

Similarly, the Chair of another Forum explained:

[Previously] they've been produced by the officers and agreed by the Forum but this time if we produce one it will probably be an A4 side produced by me to be agreed by them. (Forum member)

While the previous reports of the Forum had clearly also been drafted by officers, this interviewee believed in reality this represented a shift in power:

I think it's right the local authority should report on what it is doing. I think it is also now sad that the Admission Forum shouldn't be seen to be able to send a report that might say something different. (Forum member)

In the local authority where no report had been produced in previous years, it was clear that it was the local authority rather than the Forum that was to drive the reporting process, although whether in future this would make the Forum more or less likely to produce a report is an open question:

And the big question on the report is 'are the Forum going to do a report as well...?' and I have to say we took that to Forum last week and I gave them a blank adjudicator's report and they said 'well, how can we fill this in, we need to know what you're going to say before we can make our mind up about whether we like what

you're going to say as to whether we make our own'.

A final interesting contrast between the Admission Forum report and the local authority report concerns their orientation to action. The former, in its 2006-07 incarnation, was intended to provide an 'objective analysis' and should 'make recommendations for achieving fair access' (Information Note on Admission Forum Reports, para 5).⁷ In contrast, local authority officers did not anticipate any action would be taken as a result of the report with one replying 'Well, I hope not.'

5 A focus on fairness

5.1 Change from legality to fairness

The third change identified in the information note on Admission Forum Reports is the change in focus 'from legality to fairness' initiated by the government's response to its consultation on School Admissions. In interviews, members of Admission Forums were asked if this shift in focus had been reflected in the work of the Forum. Respondents appeared to find this question quite difficult to answer.

Probably the most expansive answer was given by the Chair of City Borough Forum. This interviewee suggested that it was actually the strengthening of the School Admissions Code in 2007, which required schools to 'act in accordance with' its mandatory provisions rather than to 'have regard to' its provisions (as had been the case with previous Codes), that had enabled the Forum to work towards achieving local admissions arrangements that met with a 'common sense' understanding of fairness. That is, the mandatory force of the Code provided the Forum with a justification for requiring admission authorities to tidy up their admissions arrangements and, in doing so, to encourage greater uniformity (for example, in methods for measuring distance), to simplify supplementary information forms and to replace subjective admissions criteria with fact-based criteria. Thus there had been a shift to achieve greater procedural fairness although this had been dependent on the change in the *legal* arrangements relating to admissions.

Another Admission Forum member, when asked about a shift to fairness, discussed the difficult questions associated with admissions criteria to denominational schools and drew attention to the contrasting missions of the founders of Roman Catholic and Church of England schools (see below). The interviewee went on to remark:

I think there is no fair way really of dealing with oversubscription criteria. Unless you get in under them - then they're fair. (Forum member)

This light-hearted comment does however contain a kernel of truth. That is, the concept of fairness, from the point of view of applicants, does not depend solely on the operation of a set of rules but also on the outcome of that process. Therefore, before we go on to describe some instances of Admission Forums explicitly or implicitly addressing questions of fairness it is useful to discuss briefly several different concepts of fairness.

⁷ This Information Note may be found at:
<http://www.eastsussex.gov.uk/yourcouncil/about/committees/meetingpapers/schooladmissions/2008/27november.htm>

First, we may distinguish between procedural fairness and substantive fairness (Le Grand, 1982). Procedural fairness is concerned with whether rules have been followed correctly while substantive fairness concerns whether outcomes are fair. When considering procedural fairness we may not only ask whether rules have been followed but also whether the rules have been rigged – that is, whether rules have been designed to achieve a substantively unfair outcome.

We may also distinguish between different concepts of substantive fairness. First we might consider the case in which all pupils receive the same outcome – that is, in which the outcome is thought of as fair because each person received an *equal* outcome. In the context of school admissions in England, such an outcome may only be realistic for school applicants in the Scilly Isles where there is one school. In this case, the outcome might be described as fair because the outcome was the same for all applicants (though notably, only in relation to school quality – not in relation to, for example travel time).

This concept of fairness may then be helpfully extended to accommodate some of the circumstances that apply to school admissions. For example, schools are qualitatively different schools and applicants' appraisals of them are subjective. We may therefore be more interested in an *equitable* outcome in which all applicants perceive their own outcome (i.e., the school place they are offered) to be of the same value as the places offered to other applicants. Relatedly, the distribution of school places may be said to be *envy-free* if no-one would want somebody else's school place more than their own.

Another distinct concept of substantive fairness rests on the idea of getting what one 'deserves'. In many circumstances we might describe an outcome as fair if protagonists got what they deserved. However, in the context of comprehensive compulsory schooling it is difficult to argue that one pupil 'deserves' a qualitatively different outcome (whether in terms of its educational quality or its subjective desirability) from another pupil.

Arguably, allocations of school places in terms of what one 'deserves' do however arise in three particular cases. First they may arise in relation to selective admission systems in which some might argue that an outcome is 'fair' because one pupil deserves a place at a secondary modern school while another pupil deserves a place at a grammar school, based on their performance in the admission test.⁸ The second, very similar, case relates to the awarding of specialist school places on the basis of aptitude in a specialist subject – thus it might be argued that the good sportsman or sportswoman 'deserves' a place at a specialist sports college and 'deserves' to be given priority over other applicants.

The third instance in which a concept of fairness based on what one 'deserves' may be applied in relation to school admissions relates to a compensatory allocation of school places, in which priority is given to children facing other disadvantages that have been recognised in law – such as the priority given to looked after children.

The priority given to looked after children illustrates the fact that more than one understanding of 'fairness' may be required to conceptualise the admissions policy of even a single school.

⁸ Alternatively, the rationale for the allocation of selective school places might rest on an efficiency argument.

Greater complexity applies to admissions to schools with a religious character. In England more than 80 per cent of secondary schools do not have a religious character, but 10 per cent are Roman Catholic, 6 per cent are Church of England schools (of which 2 per cent are voluntary controlled), 1 per cent are of other Christian denominations (or ecumenical) with a small number of Jewish, Muslim, and Sikh schools and one school categorised as having an ‘other’ religious character (DCSF, 2007).

When considering how the concept of ‘fair access to educational opportunity’ applies in relation to religious schools, it is useful first to distinguish those schools that we might describe as ‘inclusive’. By inclusive, we mean that they welcome applications from children of all faiths or none and that their oversubscription criteria do not include adherence to a religious faith. In this category we may include some of the more recently founded Church of England secondary schools. As the headteacher of one such school explained:

It’s about suggesting that the Christian principles are being applied, but are exercised in a spirit of hospitality for others. So it is *not* saying that this is a school that is there for the worshipping community, it is a school that is... supported by the Church *within* the community, which is different to being a [school] that is there *for the worshipping community*. (Headteacher)

Thus, this school’s admission policy included a catchment area and distance criterion but no religious oversubscription criteria. Thus in considering the ‘fairness’ of any allocation of school places, we might consider this school in the same manner as any other secular comprehensive school. That is, parents may express a preference to attend the school in the knowledge that it has particular characteristics - in this case being a school with a religious character but crucially without any requirement to adhere to that religious faith.

Two interviewees involved with schools with a religious character were keen to point out an important difference in relation to school admissions, between Church of England and Roman Catholic Schools. The headteacher of a Roman Catholic school explained:

The Anglican sort of *raison d’être* for admissions is different to the Catholic one. The Catholics are about passing on the faith, the Anglicans are about being a beacon to the community and so Catholics make a beeline for Catholics because it’s about passing on our faith, whereas on the whole the Anglicans are about living the Christian gospel in an area, inviting the local people, some of whom will be Anglican. (Headteacher)

However, despite this difference in outlook between the Anglican and Catholic denominations, it must be noted that most of the schools with a religious character in the case study areas (both Church of England and Catholic) applied religious oversubscription criteria.

At schools that are not ‘inclusive’, we might take the view that the schools are performing an additional function – for example, passing on the faith or sustaining a religious community – and that the state is willing to fund schools with that purpose. Thus, when considering the fair allocation of school places we must consider the balance between the preferences of applicants and the additional mission of the school. Of course questions relating to religious segregation and social cohesion also arise in this context although they are beyond the scope of this research project.

How far schools see themselves as 'inclusive' or set out to 'pass on the faith' may be reflected in their admissions criteria. For example, some criteria seek to differentiate the degree of membership of the religious community while others only apply an all or nothing test of membership of the faith community and then apply other criteria (such as distance) to differentiate between applicants. Others may apply catchment areas or other admissions criteria in addition to these.

One headteacher at a Catholic school expressed relief that the school was *undersubscribed* with Roman Catholic applicants and therefore did not have to apply criteria based on religious observance. As the interviewee explained:

I've got about 60 per cent Catholic and about 30 per cent Anglican, i.e., other Christians and then about 10 per cent sibling who are not of any faith. So I'm not in a point where I'm saying which one of you is a better Catholic? (Headteacher)

This interviewee expressed relief that successive School Admissions Codes and actions of the Adjudicator had ruled out admission processes such as interviews or including questions about marital status on application forms. The headteacher explained that in the local area, parents now have to sign in at mass in order to demonstrate their attendance record for the purposes of school admissions. As the headteacher reflected:

I'm actually very pleased that the Adjudicator [acts] and that there are rules, because I personally don't think that a good Catholic is somebody who can recite this and that, you know, and in the past I have helped kids get in to [an exclusive Catholic school] by drilling them on what are the seven sacraments... But I can understand that you can get to the point where Catholicity equates to middle class supportive parents in some areas. And your Catholicity could become discrimination i.e.,... is it fair that a child with parents who've not divorced gets in to the school and a child whose mum and dad through whatever reason - and it was the best thing in the world they did - got divorced, that child doesn't get in. Now that's not fair is it? And if I were Jesus I'd be saying who needs that school's support most? Maybe the second guy. But I really am glad I'm not head of a school which is oversubscribed with Catholics. It must be a nightmare... In our local parishes you have to sign to say you're at mass... not people like me, my children are too old, but you know, because you've got to prove that you're mass attendance is x percentage. The poor priest, how do they know? You know, they don't know everybody do they? So now there's a little signing in list at the back, you know, what nonsense that is, but then how else do you do it? I don't know. (Headteacher)

This excerpt illustrates some of the complexity very well. Clearly the headteacher is at ease with the school's admission policy being coherent with its mission to pass on the faith – therefore prioritising the admission of Catholic children. However, in the event of being oversubscribed by Catholic children, the headteacher was uncomfortable with applying oversubscription criteria based on measures of membership of that community (such as religious knowledge which may favour the admission of educationally advantaged Catholic children or signing in to show attendance at mass), suggesting that an approach based on who is most 'deserving' may be more in keeping with the a Christian mission (although, of course, applied only among the Catholic applicants).

Thus we have briefly laid out some of the complexities relating to the concept of fairness as it relates to school admissions. Now we move on to consider briefly some examples of how the concept is presented in the Admissions Code before going on to report on how the interviews illustrate the variety of ways in which fairness was explicitly or implicitly conceptualised.

It is interesting to consider whether the School Admissions Code assists our understanding of how ‘fairness’ is to be applied in relation to school admissions. The word ‘fair’ is used 120 times in the 2009 School Admissions Code. At times the word is used with a narrow sense such as in the following excerpt:

1.5 A fair system is one that provides parents with clear information about admissions and supports those parents who find it hardest to understand the system.

However, clearly the Code sets out to ensure that school admissions are procedurally fair in the sense that rules are followed and also in the sense that rules are not rigged to discriminate against particular groups of pupils – and these objectives are pursued through numerous mandatory provisions within the Code. At times however, the word is also used to imply a substantive concept of fairness such as:

1.72 ...Admission authorities and governing bodies **should** develop and implement admission arrangements, practices and oversubscription criteria that actively promote equity, and thus go further than simply ensuring that unfair practices and criteria are excluded.

While paragraph 1.72 quoted above is not a mandatory provision (that is, does not include the word ‘must’), paragraph 1.102 does contain a mandatory element:

1.102 Admission authorities for all schools **must** act upon any information that suggests that the school’s or admission authority’s policies or practices appear to be unfairly disadvantaging one group of children compared to another. There are many ways in which this might be done, for example, the most popular schools might work with primary schools in more deprived areas to encourage applications from poorer families.

This passage enjoins popular schools to work to increase applications from disadvantaged pupils (and therefore increase substantive fairness). Ironically however, in the first sentence, the word ‘unfairly’ weakens this requirement. That is, schools ‘must act’ if policies ‘appear to be *unfairly* disadvantaging’ one group of pupils, presumably in contrast to policies that fairly disadvantage a group of pupils.

5.2 Substantive fairness

Of course interviewees were aware of the importance of substantive as well as procedural fairness as is illustrated in the following passage taken from an interview with a local authority interviewee:

But there’s never absolute fair access for admission to a school, because it depends what your criterion is - and whatever it is, there’s going to be winners and losers. And we mainly have distance, so you know some parents depending on where they live... may potentially be eligible for a place at three schools and we still have pockets where

it's quite difficult for parents to access a place [at all] or at least a place that they want... (Officer)

Thus applicants' home address could determine whether they would (potentially) receive an offer from several schools or from no school (or at least no oversubscribed school). The interviewee went on to discuss the relative merits of a system of catchment areas rather than the existing distance criterion. However when members of the public were consulted, not surprisingly, they stated that which system they preferred would depend on which school catchment their address fell in. The interviewee went on:

I think we will probably just stick to you know mainly distance as priority. It's as fair as any other... I suppose what you've got to do also is to make sure that all of your schools are acceptable to parents so if they don't get in to, you know, [the most popular school] for example, they're happy with whatever they get in to and I think that's the key to it. (Officer)

This interviewee identified the relative acceptability of the different schools available to applicants as 'key' to delivering a fair allocation of school places. In short, for the allocation of school places to be more equitable, or closer to an envy-free distribution, it was vital that all schools were 'acceptable to parents'. This point was echoed by a headteacher, when asked what changes the headteacher would like to make to local admissions arrangements:

Ensuring that every local school is a good school and therefore a parent is able to get a good deal - and what causes the problem is the variance that exists between the various schools that make some more popular than others. (Headteacher)

One means of using admission arrangements to promote greater substantive fairness is to operate area wide banding. As we have seen, several schools in one of the case study authorities operated banding arrangements. However, interestingly the local authority officer and Chair of the Admission Forum, while supporting banding, clearly did not see the policy as a panacea. In particular, they pointed out that the policy had little impact if schools were undersubscribed and had, in previous years when more local schools were undersubscribed, added a layer of bureaucracy but had little effect on the intake of schools. Nevertheless, both interviewees expressed the view that, in the current circumstances in which most of their local schools were oversubscribed, the policy could helpfully contribute to the perception that schools admitted children across the full ability range.

Interestingly, the headteacher of an academy had conveyed the school's opposition to banding (in this case 'fair banding' by an individual school) to the other schools in the area. Despite several other interviewees expressing the concern that academies may 'skim the cream' of local applicants, the opposition to banding from this headteacher of an academy arose from a different perspective:

we have voiced the concern that we would oppose an admissions policy if it was to attempt to go for fair banding because although fair banding could be said to be an enormous help for us to transform our intake over night, our philosophical point of getting involved in the academy movement is to provide... education for local children and... the local children are about some of the most challenging children in this area. (Headteacher)

That is, the headteacher did not want to introduce banding (or feel forced to by the actions of other schools) because the mission of the academy was to deliver educational opportunities to the local, disadvantaged, children.

We would suggest that there is another means of increasing substantive fairness by moving slightly closer to an envy-free allocation of school places. That is, when applicants receive their highest ranked available preference on offer day, there may be means of increasing the number of higher preferences met. For example, it is perfectly possible that one applicant may receive an offer from school A but whose highest preference was for school B. Conversely, another applicant living closer to school B may have received an offer from that school but had a higher preference for school A. We do not believe that allocation systems would, in such circumstances, have a mechanism to seek to maximise, or at least to increase, the number of higher preferences that could be met. We are aware we are not the first to make this observation⁹ and that there may be some organisational obstacles to delivering this improvement. However, we believe that parental satisfaction should lie at the heart of the admissions system and therefore that such a modification should be considered.

5.3 Procedural fairness

Notwithstanding the foregoing discussion, the main focus on the School Admissions Code, its associated compliance regime and also of Admission Forums is undoubtedly on procedural fairness. This focus on procedural rather than substantive fairness is illustrated if we consider some the responses of local authority interviewees when they were asked about the duty to report to the Schools Adjudicator admissions arrangements that ‘encourage social segregation’ (para 4.12). For example, some interviewees acknowledged that some areas were socially segregated (for example, due to property prices or the location of social housing). However, none of the respondents indicated that they viewed the operation of distance or catchment criteria within such areas to be potentially problematic. For example one stated no objection would be made ‘as long as there’s nothing in their oversubscription criteria that obviously goes against the Code’. Another respondent, from a shire county, expanded further:

[How do you interpret] the duty to report arrangements that encourage social segregation?

I think that we’d look at anything where a case was raised that a school was steering consciously towards the whiter areas as against the non-white areas... But I think we would be worried if schools were deliberately contriving admissions areas which excluded areas of travellers, or which excluded areas of high Muslim populations. Beyond that, I’m not sure we’d go very far. There are clearly big towns... where you can say there are poorer bits and richer bits and we don’t impose a bussing system. So effectively the school in the poorer bit will serve the people who live in the poorer bits... So I don’t think we try to go beyond watching out for very deliberate or very visibly provocative admissions arrangements. (Officer)

⁹ The issue was raised with the Pan-London Admissions Executive Board by a Local Government Ombudsman.

Thus while the Code states in an introductory paragraph that it is ‘necessary to improve the chances of more disadvantaged children getting into good schools’ it is clear that those interpreting the Code are not taking advantage of all opportunities to improve those chances.¹⁰

Following the admission rules

Several interviewees expressed the view that admissions arrangements for which they were responsible both complied with the Code and were administered correctly. Some stated that they were unaware whether this was also the case at other local schools for which they were not responsible and others expressed doubts as to whether other schools complied with the Code.

It was, however, also noted by several interviewees that the situation had improved markedly in recent years, as one stated:

...the Code of Practice has done its best to regulate it and... I mean it has done wonders in the last ten, fifteen years... it’s changed everywhere... co-ordinated admissions has really changed things, because... parents cannot play the system any more and there’s no doubt they could play the system before and the law allowed them to play the system.

In addition to limiting the scope for to ‘play the system’, as was reported earlier, respondents also noted that successive Codes and actions of the Adjudicator had also placed a welcome check on the behaviour of some schools.

Nevertheless, some interviewees were able to identify concrete examples of where rules relating to school admissions had not been followed. For example, two local authority interviewees described instances of school places being taken away from applicants after parents were shown to have provided misleading information in their applications (in line with paragraph 1.50 of the Code). In relation to the behaviour of schools, in the following excerpt a local authority interviewee expresses doubts about the operation of waiting lists at a school that was its own admission authority:

I’d like to know how confident you are that schools that are their own admission authority are able to carry out their responsibilities in compliance with the Code?

Hmm – if I put my hand on my heart I would say not at all confident, no... there’s one Catholic School... that do everything... to the letter of the law. The others I wouldn’t have confidence to say that they did...And that’s shown by the fact that for the 2009 in take... if we have places become available... we would like to go to the waiting list for that school, which is ranked by themselves, obviously, and...if we had three places we’d like to offer the first three on the waiting list, but we can’t because they then want to have an admission meeting and then they decide and sometimes it isn’t those 3 children that get the places.

¹⁰ Of course, it would be wrong to assume that a school serving an advantaged intake is good school. However, as the government’s Contextual Value Added calculation illustrates, pupils who attend schools with higher attaining intakes (and which have a smaller spread of prior attainment across their intake), are expected to make greater academic progress than those attending schools that lack these characteristics.

Other local authority interviewees expressed similar concerns in relation to the allocation of places for in year casual admissions although accusations had never been substantiated with concrete evidence. However, it was anticipated that this situation would improve once local authorities took over responsibility for in-year admissions (outside the normal admission rounds) as well as conventional transfers (e.g., from primary to secondary school).

Interviewees in one case study authority recounted an example of practice that may not be in breach of the present Code. However, it would be easy to imagine modifications to the Code ensuring it is outlawed in future. In this case an Admission Forum member had been made aware, through the local authority, that an undersubscribed school in a neighbouring authority had written to applicants *after* offer day. The school wrote to applicants who *would* have been offered a place at that school but had instead received an offer from a *higher preference* school within the case study authority. In the letter, applicants were invited to the school to meet with the head teacher with the intention that they might be persuaded to reject the higher ranked offer and instead take up a place at the school in the neighbouring authority.

While the Code states that schools must not be informed of the rank order of an applicant's preferences (1.76), the Code does not state explicitly whether schools must *never* be informed, or only at the stage when schools apply admissions criteria. And regardless of that, it would be possible for a similar procedure to be followed even without information as to the rank order of preferences (for example, a school using supplementary information forms could contact parents who were not offered a place). However, policymakers may not wish such a practice to become widespread.

Setting the admission rules

Another example of a school not breaking the Admissions Code, but arguably sailing close to the wind, arose from a school whose admission policy proposed to use proximity as its key criterion. However it was not distance to the school that would determine the rank order of applicants but rather the distance to a building approximately half a mile from the school. While the local authority had not objected to this change to the admission policy another school was reported to have done so. (The authority was sympathetic to the proposed change on the grounds that it would enable a greater number children resident in the local authority to be educated at local schools.)

It is interesting that in this case (measuring distance to somewhere other than the school) the local authority interviewee could provide a cogent account of the potential benefits of the arrangement while to an observer, suspicious that the change may be motivated by a wish to secure an 'easier to teach' intake, it may appear to establish a problematic precedent.

Changes to admissions criteria that could be viewed as suspicious were also evident in other authorities. For example, minutes of a Forum meeting record the concern expressed by the Forum on seeing that a secondary school had named a new feeder school in its admissions criteria without the knowledge of the headteacher of that primary school. In another of the authorities an interviewee described how a school had removed the sibling rule from among its oversubscription criteria with the aim of breaking the link with its previous intake – the interviewee expressed the expectation that it would be restored in future.

Yet once again, in both these cases, cogent and arguably laudable explanations were provided as to the reasons for the changes. In the former case it was explained that the change was motivated by a desire not to discriminate against 'within catchment' applicants who had

chosen to attend a denominational ‘out of catchment’ primary school. In the latter case a school in special measures had become increasingly popular and, it was hoped, could stem the flow of more advantaged pupils to schools outside the city.

Nevertheless, there was undoubtedly some evidence in interviews that some suspicions were harboured about the actions (or possible actions) of some admission authorities:

My worry is about the academies. My worry is whether or not there really is going to be fair access and... watching the whole, the whole exclusion agenda for those schools. And making sure that actually it is about fairness for local communities and distance and all of that. (Forum member)

A headteacher, after explaining that, as an undersubscribed school, the main benefit to the school of being its own admission authority was to be able to reduce its Planned Admission Number and therefore restrict the flow of in-year admissions (a view that was echoed by two other interviewees), went on to describe the governors’ discussion of oversubscription criteria:

When we debate it at governors level, the criteria – the oversubscription criteria, if we should ever get to that, we were very clear that it was about the purpose of this school, to serve a comprehensive range of youngsters in the town area. So we didn’t – we deliberately chose not to put in any criteria which may skew the intake one way or the other... we were very clear that we weren’t going to be sneaky about anything... Sounds dreadful, doesn’t it? But there again, you know what I’m saying, I think. (Headteacher)

It is clear that, at least at times, deliberations concerning the setting of admissions policies are carried out in an atmosphere of suspicion.

So, in view of some interviewees’ doubts about the actions of some admission authorities, and the evidence of some continuing infringements of the School Admissions Code, are we to conclude that there is a need for ever more stringent policing of school admissions? After all, several interviewees spoke very positively about the improvements made to admissions arrangements as a result of successive School Admission Codes and, in particular, the introduction of co-ordinated admissions. However, we would resist the conclusion that continuing to strengthen the policing regime would provide a good solution for two reasons. First, as the Code becomes more exacting, in part attempting to eradicate the worst abuses, it may be that many schools will continue to technically or inadvertently infringe the Code. The second reason for resisting the conclusion that more policing is required to solve current problems is that many problems can be created without infringing the Code at all.

Taking these considerations in turn, the increasing complexity of the Code and concomitant difficulty of complying with it were remarked upon by several interviewees. For example, as one interviewee, who spoke very highly of the achievements of the Schools Adjudicator and the eradication of unjustifiable admission practices, said in relation to the Code and current compliance regime:

The paperwork around admissions has just boomed and the Admissions Code gets fatter every year. And this is not, to me, the measure of the more successful

document... - the multiplication of rules to the exclusion of anyone's actual understanding of participation within them. (Officer)

Other interviewees' accounts corroborated this view that admission authorities struggled to understand the requirements of the Code. Even local authority interviewees working day to day on admissions stated that they found the Code a difficult document. Indeed, for headteachers and governing bodies of undersubscribed schools, checking that oversubscription criteria were compliant with the Code may seem a particularly futile task. One interviewee commented that some schools were only too pleased to be given advice on admissions policies and this was echoed by a headteacher:

How confident are you that the admissions arrangements for your school comply with the Admissions Code?

Very, because I'm lucky I have two sets of people guiding me. I've got the local authority guidance and I've got the diocesan guidance. And checking up on me. So I know that mine comply. And there's never been an issue for me. (Headteacher)

Perhaps most tellingly of all, this school's admission policy included a request for a written statement explaining why non-religious applicants wished to attend the school. Yet the Code (1.83) states that admission authorities must only use supplementary information forms 'that request additional information when it has a direct bearing on decisions about acceptable oversubscription criteria'. Thus despite the advice available and checking, the school's policy may arguably be viewed as breaching the Code. Indeed, the admissions policy at the school of another headteacher who was interviewed was undoubtedly not compliant with the Code (though an amendment had been made for the following year). A third headteacher, whose school's admission policy included a reference to the 2007 Admission Code did not know whether the provision had been retained in the 2009 Code (which it had, and therefore the policy did not contravene the Code). It appears that it is not difficult to find schools that fall foul of the Code.

As one interviewee explained, this is perhaps in part because of the unhelpful times at which the two most recent Codes have taken effect:

I think it's... the constant change. Continual changes in legislation are very difficult. And then the most difficult aspect of them is that despite vociferous representations from diocese and local authorities the Department [for Children, Schools and Families] has introduced... the last two Codes in February [and with immediate effect] which has meant... [schools] are open to being named and shamed as being non compliant, when actually they've been compliant with the Code that's existing at the time they went to consultation [a year earlier].

Of course this may also be the case for the schools described above as arguably not complying with the Code.

The other significance of introducing a new Code in February, which was pointed out by this interviewee and by a local authority interviewee, was that the Code changed *during* the consultation period for the admission arrangements for the following year. In some cases this had meant having to revise admissions policies at short notice or in one instance, being left with insufficient time in which to consult on new admission policies.

The circumstances surrounding this latter case bring us on to the second reason for resisting the view that an increasingly intense compliance regime would be the only, or necessarily the most effective, means of improving school admission arrangements – that is, that substantial problems can be caused without any infringement of the Code.

In this authority non-denominational schools had, in recent years, operated with catchment areas. However, one school then became its own admission authority and adopted a different policy with applicants from two feeder primary schools taking priority. The local authority interviewee explained that it was considering what, if any, response it should make to the admissions policies of the community schools to this change (for example, adjusting catchment areas or adopting a distance criterion). The new Admission Code was then introduced and as it required an eight week consultation period to be completed by March it was explained that this left the local authority with insufficient time to make any suggestions for the community schools. Consequently the community schools were left with the admissions arrangements that operated the previous year.

In effect, the local authority area had previously been covered by a patchwork of secondary school catchment areas. However, for the following year, one of those patches ceased to be a catchment area for any school. Children living within that catchment area and attending the two primary schools that had become feeder schools to the foundation secondary school would then have priority in going on to that secondary school. However, all children living in the area but not attending those schools would not be in the catchment area for any of the other schools in the authority. They would therefore be treated as ‘out of catchment’ applications. Consequently we might expect any such applicants to move down a ranking of applications to the former catchment school and to remain a relatively low priority applicant to all other schools within the authority. We do not wish to overstate the impact of this case and have no evidence concerning the number of children who might be expected to be in this position – it is possible that it would only be a small number. However, there are also knock-on effects to consider.

The interviewee speculated that in the following year it was likely that the schools that currently operated catchment areas would adopt a distance criterion. Consequently we might expect that established patterns of school attendance, based on previous catchment areas, would be disrupted by the inevitable creation of new areas within the authority, sometimes referred to as ‘dead zones’, in which applicants may be likely not to receive an offer from any of the more popular (oversubscribed) schools. (Once again, it is important not to overstate the case and to acknowledge that this may also be the case under the previous catchment area-based policy – that is, similar ‘dead zones’ may also have existed under previous arrangements.)

Nevertheless, it is worth reflecting for a moment on the decision of one school to abandon its catchment area policy in favour of a different admission policy. For the school, the new policy was seen as part of a vision for to create an integrated learning community covering different phases of education. It was clearly an ambitious vision in a rapidly improving school and the change in the admission policy may be viewed as a manifestation of the school’s commitment to innovation and improvement. As described above, we might expect this change in policy however to recast the distribution of uncertainty about the likely outcome of school admissions for children throughout the authority.

The Chair of the Admission Forum had clearly reflected on this change in admission policy at some length. The chair's concern considered the possible impact of the change on substantive fairness and on social segregation between schools. In short, the chair's concern was that one of the two feeder schools was a 'highly over-subscribed and successful junior school'. The catchment area for that junior school however included a large council housing area, although that was on the outer edge of its catchment. The Chair observed that should that junior school be oversubscribed, applicants from the council housing area would then be unlikely to gain a place at the junior school. However if attendance at the feeder schools was then given higher priority in the oversubscription criteria for the secondary school, the children living in the council housing area could also be excluded from the secondary school in which they may previously have been able to gain a place. The Chair expressed frustration that the Forum did not have the power or resources to ensure that analysis was carried out to examine the likelihood of this outcome actually occurring (for example by looking at application and residency patterns in previous years). As the Chair put it:

Now as I read the Code, catchment criteria shouldn't be changed such that it reduces the chance of children in deprived areas of having access to that school...The Admissions Forum is the right place, when we get a change in criteria, to ask the questions. What isn't clear to me as the Chair of this Forum, is when I ask that question what right have I to demand the research to check it out? Who does it? What we did this year is we didn't challenge it... (Forum member)

The interviewee went on:

They [the Forum] understood my question but I don't think we had the guts to challenge and that's partly about [the need to maintain good] relationships with schools... I raised the question as the Chair but in the main I don't think people felt [the school] were doing anything – there wasn't a feeling that they were doing this to make sure they get a nice middle class [intake]...they have improved their achievements under the old criteria. There wasn't a feeling that this school is deliberately changing from catchment to feeder schools to feather its nest or whatever you want to say and therefore there wasn't [a decision¹¹] to challenge. (Forum member)

Interestingly the motivation, at least as reported by this interviewee, for the Forum's decision not to challenge the new admission policy or to refer to the Schools Adjudicator was based on the view that the school did not 'deserve' to be challenged – on the grounds that it was an admirably successful and improving school and members of the Forum did not believe it intended to secure an advantaged intake. However, we would argue strongly that decisions as to whether to object to admissions arrangements should be motivated by a desire to be fair to pupils and parents rather than a desire to be fair to schools.

While the failure to meet preferences is clearly one source of dissatisfaction to parents, the loss of predictability can also be a source of grievance. For example, one interviewee described how the authority had, in previous years, operated a system of drawing catchment areas after applications to schools were received. As the interviewee explained:

¹¹ This word is inaudible on the recording of the interview and we are unable to be sure whether it was 'decision', 'appetite', 'motivation' or any other possible word.

We had a practice... that, for some years, we now look on as having been incorrect. Which was that we would have admission areas defined after the receipt of applications and normally there would be a recognised admissions area say on three sides of a square and a fourth side of a square a line we'd move according to the number of applications. So you'd know how you contracted or expanded a school according to it's popularity and it would always fall on one front. Effectively we now think that is outside the scope of what's done legally. So we have changed to try and have objective criteria, everyone can see beforehand and I'm sure that change is correct in law and correct in moral terms. It's a much fairer approach. It does however mean that over the years we've got people in certain areas to expect a question to arise and others to feel a lot a assurance. Now the doubt falls more evenly and so some communities' access to a school had been turned in to doubt, where they felt it previously secure. (Officer)

The Chair of the local Admission Forum gave an example of the uproar generated when a local Foundation school adjusted its admissions policy. The proposed change was to introduce an inner and outer catchment area. Applicants from within the inner area would be ranked according to their distance to the school. Applicants from the outer area would however be ranked according to their distance from the 'nearest alternative school' with those for whom the nearest alternative school was furthest away ranked most highly. Such a policy could be seen as seeking to minimise the length of school journeys undertaken by children and to protect the interests of children living in isolated communities. As the Chair explained:

It was an example of a foundation school wanting to change its admissions arrangements entirely within the government guidelines and therefore not something that we could interfere with. But I got a tremendous mailbag – as did [the senior officer], and the head of learning... the local MP and local councillors - from the people who are going to be affected... This caused a huge hue and cry. I mean massive... And they [the school] saw it as a fairer way of doing something...Of course the governors thought it was a perfectly logical thing to do... and then you go out to consultation and all hell breaks loose... And that's what this particular foundation school suddenly discovered for themselves.

This interviewee, Admission Forum Chair and also Cabinet Member for Education, was responsible for school admissions policies in a large number of community schools. The Chair could sympathise with the difficulties faced by the governing body as the interviewee had also been faced with the need to choose between competing legal (and equally plausible) rationales for admitting pupils. As the interviewee put it, 'it isn't easy, you'll require the wisdom of Solomon, perhaps, and sometimes you get it wrong'.

However, the effect of having several schools that were their own admission authority within an area could be especially problematic, as the officer went on to explain:

we'll get the issue that if you've got an area with four secondary schools in it and all four of those secondary schools leave the local authority's immediate control and adopt independent admissions policies, you may get a situation where parts of that [area] have no school making an offer of places to them. And at some point we need to be able to make sure that we can discharge our legal duty to offer everyone a place and these things sit in contradiction... without coming with a great state control agenda behind them, but I think the ability to run a fair system starts to impose on all councils

including this one and including conservative minded members of this one. How do we make sure that citizens of village x have a reasonable offer? (Officer)

6 Conclusion

A key feature of Admission Forums is their lack of formal powers, indeed they might be crudely characterised as a mandatory body in search of a role. One of the five Admission Forums had successfully carved out a leadership role concerning school admissions within the local area although the other Admission Forums had achieved more modest success. Forums could also perform a scrutiny function although this could sometimes place them at odds with the local authority or local schools. The other potential roles were described as a symbolic role, a potentially expert role in keeping with the formal duties to ‘consider and advise’ and a perfunctory role largely confined to carrying out mandatory duties.

The membership and reporting arrangements relating to Forums have been modified in recent years. The membership rules have been adjusted and although these changes were in the process of being carried out when this research was carried out, the evidence from interviewees suggested that this may have only a modest impact on the operation of Forums. However we would make two observations regarding the membership of Forums. The first is that representation on Forums overwhelmingly favours educational providers (schools, sponsoring religious bodies and local authorities) rather than educational consumers and that this is sometimes reflected in the deliberations of the Forum. The second is to note that if Forums adopt a scrutiny role, that role may be jeopardised by the fact that the Forum is appointed by the local authority.

The change in reporting arrangements arose from the imposition of a duty on local authorities to report annually to the Schools Adjudicator on local admissions arrangements. The prescribed content of the Forum reports became less specific and seemingly the level of ambition for such reports has decreased. While very few Admission Forums had previously submitted reports to the Schools Commissioner or the Schools Adjudicator in the preceding years, one unintended consequence of the change in reporting arrangements may be to render Admission Forums even less likely to produce a report. As with their mixed success in establishing a role, Forums’ reports, where they had been compiled, clearly fell short of the analytical documents at one time envisaged although, once again, the City Borough Forum showed they could make a positive contribution to the understanding of local admissions.

The third change in arrangements concerning Forums was to specify that Admission Forums should focus on the fairness of admissions arrangements rather than on their legality. Fairness can be conceptualised in a variety of ways. Some interviewees acknowledged the importance of substantive fairness and in particular that fair admissions was in large part dependent on the availability of good local schools without great variation in the quality of education on offer. Thus some interviewees acknowledged the importance of substantive fairness rather than just procedural fairness although it was clear that procedural fairness was most often how fairness was conceptualised in relation to school admissions.

While it was certainly not seen as a panacea, substantive fairness could be improved by fair area-wide banding. Another means of moving towards a slightly more equitable allocation of school places, and moving closer to an ‘envy-free’ allocation, is to seek means of fulfilling a larger number of higher preferences. There may be an opportunity to marginally increase the number of higher preferences met. More specifically, when applicants receive their highest

ranked offer on offer day, there may be means of increasing the number of higher preferences met. For example, it is perfectly possible that one applicant may receive an offer from school A but whose highest preference was for school B. Conversely, another applicant may have received an offer for school B but had a higher preference for school A. We believe that allocation systems should, in such circumstances, have a mechanism to seek to maximise, or at least increase, the number of higher preferences met. Parental satisfaction should lie at the heart of the admissions system and work should be undertaken to identify the number of higher preference offers that could be made by introducing a mechanism for exchanging offers (prior to offer day) in such cases where both parties would then receive a higher preference and that different mechanisms for organising such swaps should be considered.

It is however clear that, in relation to secondary school admissions, fairness is usually conceptualised in terms of procedural fairness. While most admission authorities were thought to operate their admission arrangements in accordance with the relevant rules, there was some evidence of a small number of schools breaking admissions rules or adopting practices that would be unlikely to be supported by regulatory authorities. In addition, there was evidence to suggest that deliberations concerning the setting of oversubscription criteria are at times undertaken with some suspicion regarding the motives of some actors.

Admissions arrangements have undoubtedly improved in recent years, in large part due to the success of co-ordinated schemes, successive School Admissions Codes and the efforts of the Schools Adjudicators. The requirement of local authorities to report on admissions arrangements represents another extension of this compliance regime. However we would argue that ever greater policing of school admissions arrangements cannot, on its own, deliver fair admissions arrangements. We would suggest this is the case for three reasons. First, we would argue that substantively fair outcomes cannot be achieved simply through procedurally fair mechanisms. Second, we would suggest that one unintended consequence of operating an increasingly more demanding compliance regime is that more schools may inadvertently fall foul of changes in admissions rules. Third, we would argue that fairness may be diminished and local admissions arrangements undermined without any individual admission authority breaking the School Admissions Code.

Consequently we would suggest that there is a need for greater collective control over school admissions arrangements. We would suggest that improvements could be made in a variety of ways. First, local authorities could be given greater control over the *administration* of school admissions. Through local agreements, the case study local authorities administered admissions on behalf of a number of schools that were their own admission authority, including voluntary aided schools and academies. This could be extended to include all schools that are their own admission authority.

Interviewees suggested that co-ordinated schemes for school admissions have produced major improvements in the allocation of school places. However, we would argue there is a need for greater co-ordination, including the co-ordination of *oversubscription criteria*. This could be achieved through several means. One option would be to reduce the number of schools with the power to set their own oversubscription criteria. In particular, in the case of schools without a religious character, it is not obvious that schools setting their own oversubscription criteria is of benefit to the local community.

Another option, supported by evidence from our research, suggests that Admission Forums *can* play a useful role in promoting the co-ordination of admission criteria. We would suggest

that the promotion of co-ordinated admission criteria could be made an explicit duty of Forums. We are not necessarily suggesting that a single set of oversubscription criteria should be applied to all schools in an area, or even to all schools without a religious character within an area. Rather, we are suggesting that, in addition to the requirements that arrangements are 'clear', 'objective' and 'procedurally fair', they should also be 'co-ordinated' with the arrangements for other schools in the area. To give two examples, first admissions arrangements for a given area should be able to provide all local children (expressing a preference for a local school) with a place at a local school. Second, admissions criteria for local schools should, collectively, be simple and easily understood by applicants.

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