

OSA Annual Report 2010

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Introduction



I am pleased to be able to present my report on the work of the Office of the Schools Adjudicator for the year 1 September 2009 – 31 August 2010.

This is the eleventh Annual Report of the Chief Schools Adjudicator for England and my second in that role. When I reported last year I had only been in the post for five months, so much of what I reported had been overseen by my predecessor, Sir Philip Hunter, and by Dr Elizabeth Passmore OBE who had acted as interim Chief Adjudicator for three months pending my arrival.

My first complete year has been a busy and interesting one spanning the change of Government in May, and one that has seen a considerable increase in parental interest and challenge, particularly in the area of admissions.

The report generally follows the format of last year's document, but has responded to feedback by aiming to be more 'printer friendly' and easier to read by, amongst other things, the omission of coloured pages and photographs.

I hope that the Secretary of State finds this report useful. Feedback suggested that last year's report was also considered to be useful by admission authorities and others (especially parents) with an interest in our work. I hope that this year's report is also of interest to a similarly wide audience.

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Executive summary

The period covered by this report has been very busy, the office dealing with 539 referrals this year compared to 399 last year, with a considerable increase over the year in parental interest and challenge. Although a significant increase, many cases involved multiple challenges to the same school or Local Authority (LA). This increase also needs to be put within the context of 152 LAs and over 5,000 Own Admission Authority (OAA) state funded schools in England that could be referred.

The largest increase was in **Admission** referrals which almost doubled. Over two-thirds of these referrals took place in July leaving little time to resolve them in time for the start of the new school year. 92% of admission referrals this year were from parents.

In general adjudicators consider that arrangements are getting better, with most challenges no longer about obvious errors and omissions, but usually relating to the interpretation of the School Admissions Code (The Code) in the local context.

Issues that have been notable this year relate to separating aptitude and ability testing, admission arrangements for sixth forms, and points systems used in oversubscription criteria.

Of the admission objections determined and published during the year, approximately half were upheld.

More than two-thirds of the **Variations** requested this year related to in-year changes to Published Admission Numbers (PANs), which can only be requested due to 'significant and unforeseen changes in circumstances'. In some cases applications were considered by adjudicators neither to be significant nor unforeseen, and in others it was considered that they could reasonably wait for the next annual round of consultation.

Statutory Proposals referred this year were similar in number to last year, and most came to an adjudicator because regulation required them to do so, rather than because of local disputes. Many still came to us because the LA failed to determine them within the regulatory timescale.

For the third year running, the number of **Pupil Directions** referred to us have reduced – only ten for the whole year. This is excellent news, confirming that local arrangements for hard to place pupils are now working well. There is however still evidence that incorrect procedures are being used that often delay (but not prevent) access for these pupils, with consequent loss of their education.

Land Transfers remain a minor, but very time-consuming, activity for us.

This is the second year that the 152 local authorities (LAs) in England have been required to submit **LA Reports** on admission arrangements in their areas to the Adjudicator. This year these reports showed that most LAs had effective Fair Access Protocols (FAPs) in place. Most had all schools complying with infant class size regulations, or where they were not they were taking 'qualifying measures'. The majority of LAs also confirmed that

independent admission appeals panels in their areas were working effectively, although a large minority were unsure about how compliant panels for OAA schools were with the School Admission Appeals Code, and had no way of checking. There were concerns expressed about the new requirement to coordinate in-year applications.

It was disappointing only to have received seven Admission Forum reports by 30 June, and equally disappointing that only 39% of LAs had shared their LA Report with their Admission Forum before it was sent to the OSA.

Choice Advice now seems to be well established, but proposals for expansion of the service by a number of LAs next year may now be in doubt.

Adjudicators carried out a more limited **Compliance** exercise this year, looking in detail at only 17 LAs. This showed improvements in most areas adjudicators examined, but there remain significant gaps, particularly in the arrangements and processes of OAAs. The picture of compliance in the Adjudicator sample provided a significantly less positive picture than that provided by LAs in their own reports.

The Chief Adjudicator was only asked by the Secretary of State to make one specific report during the year covered by this report, on **Fraudulent and Misleading Applications** to schools. This report was delivered at the end of February 2010 and published on the OSA website. It received wide media coverage at the time, so is only mentioned in this report for completeness.

Inevitably a report of this kind identifies areas that can be further improved. That is one of its functions. However, this should not obscure the very positive messages that it also contains.

The report ends with five recommendations. They are:

Recommendation 1 – There should be one consistent, independent route through which all interested parties can object to the admission arrangements of all state schools for determination.

Recommendation 2 – The annual LA Report should have fewer prescribed headings, allowing for its focus to change year by year, to give a better national picture of the issues that are particularly pertinent at the time.

Recommendation 3 – There should be a requirement on LAs to have their annual reports discussed/reviewed (or possibly approved) by their Admission Forums prior to submission, leaving open the ability of the Forum to submit its own report, or supplementary comments, if it wished to do so.

Recommendation 4 – There should be a requirement for LAs to confirm to the DfE, by mid May each year, that their arrangements and those of all own admission authorities (OAAs) in their areas (including sixth form arrangements and supplementary information forms), are published on their websites in accordance with the Code.

Recommendation 5 – The annual compliance exercise carried out by adjudicators should be discontinued and alternative arrangements put in place.

Background

1. The Office of the Schools Adjudicator (OSA) was formed in 1999 as a consequence of the School Standards and Framework Act 1998. The Office has a remit across the whole of England, but not for other parts of the United Kingdom.
2. Adjudicators resolve differences over the interpretation and application of legislation and guidance on admissions and the provision of school places. The five main functions of Schools Adjudicators are to:
 - determine objections to school admission arrangements;
 - decide on requests to vary determined admission arrangements;
 - resolve disputes relating to school reorganisation proposals (including the provision of new schools);
 - resolve disputes on the transfer and disposal of non playing field land and assets; and
 - determine appeals from schools against a direction from a LA to admit a particular pupil.
3. The Chief Schools Adjudicator can also be asked by the Secretary of State to undertake other relevant tasks as appropriate.
4. There are currently ten Schools Adjudicators, including the Chief Adjudicator. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. Their role is to look afresh at all cases referred to them and consider each case on its merits in the light of legislation, Statutory Guidance for Decision Makers on Statutory Proposals and the School Admissions Code (the Code). They evaluate and determine cases taking account of the reasons for disagreement at local level and the views of interested parties. In the case of school reorganisation proposals it is usual practice for adjudicators to hold public meetings. For other cases adjudicators hold meetings if they consider it to be helpful to them as they investigate a case.
5. Adjudicators are independent of the Department for Education (DfE), and from each other. They work alone in considering a referral to them unless the Chief Adjudicator assigns a particular case or cases to a panel of two or more adjudicators, in which case the panel will consider the case(s) together. All adjudicators (including the Chief Adjudicator) are part-time, work from home and take adjudications on a 'call-off' basis. All may therefore undertake other work at times when they are not working for the OSA.

6. Adjudicators are supervised by the Administrative Justice and Tribunals Council (AJTC). They adhere to a strict Code of Conduct and do not normally take cases in LAs where they have worked in a substantial capacity during the last ten years or where they currently live. Adjudicators will not act where they have previously worked closely with individuals involved in a case of for any other reason if they feel that their objectivity might be compromised.
7. The OSA is a tribunal, and all adjudicators work within tribunal legislation and procedures. Decisions, once published, cannot be challenged other than through the Courts.
8. Determinations are legally binding on LAs and other admission authorities, therefore all are checked before publication by lawyers for their legal accuracy, and by the Chief Adjudicator for consistency. Adjudicators have regard to similar previous cases and determinations, but are not bound by them, as they are required to take the specific features and context of each new case into account.

Review of the 2009 Report recommendations

9. My last Annual Report (2009) concluded with eleven recommendations – two outstanding from the previous year, four general recommendations arising from the Report, and five relating to the three specific reports commissioned during the year by the then Secretary of State, on Twins and Multiple Births, Random Allocation and Fraudulent Applications.
10. In November 2009, immediately following the submission of last year's report to the Secretary of State, I received a letter from him in which he accepted 'in principle' all my recommendations, saying that he was asking officials to consider how they could be implemented. The subsequent change of Government in May this year has meant that most of the recommendations, which needed either a change of legislation, or changes to the Code, were put into abeyance pending consideration by new Ministers. Consequently, but understandably, many have not yet been implemented.

11. The recommendations, and their progress to date are as follows.

Recommendation 1 – To avoid continued confusion and mixed practice, definitions are still required in the Code (or until a new Code is published, on the Guidance on Admissions section of the DCSF website) for key terms such as 'parents', 'siblings', 'distance' and 'home address'.

12. Although this recommendation, which has been outstanding since 2008, could be dealt with via the DfE website, officials were asked by the previous Secretary of State to consider how it could be met through an extension of the Glossary in the Code. It is therefore pending decisions by Ministers on how any revisions to the Code should be taken forward.

Recommendation 2 – Faith groups nationally should take responsibility for drawing up some model Supplementary Information Forms (SIFs) for use when determining the 2011 arrangements.

13. This recommendation has also been outstanding since 2008. Although this has been discussed by representatives of the faith groups, as yet it has not been acted upon by them.

Recommendation 3 – Greater clarity is needed in the Code about parents' rights relating to deferral of school places until a child is of statutory school age.

14. This recommendation was accepted alongside a similar recommendation made by Sir Jim Rose in his review of the primary curriculum, and was clarified in the revised Code that came into force on 10 February 2010. Paragraph 2.69 of the Code now says that *'Admission authorities **must** allow parents of children who are offered a place at the school before they are of compulsory school age to defer their child's entry until later in the school year.'*

Recommendation 4 – Objections to the admission arrangements of Academies should be treated in the same way as other state funded schools and 'determined' by the Adjudicator.

15. It was accepted by the then Secretary of State that Academies' admission arrangements being dealt with differently to other state funded schools was confusing to parents and others, as well as potentially being regarded as unfair. This recommendation was made at the same time as proposals to move admissions decisions from the Secretary of State to the Young People's Learning Agency (YPLA), acting on his behalf. It was agreed that as from 1 May 2010 an 'interim' position was put in place, whereby Academies' objections could be received by either the YPLA or the OSA, and investigated by adjudicators who would write a draft determination, which would be sent to the YPLA to send out under their signature, on behalf of the Secretary of State. Should the YPLA disagree with the draft determination it would be referred to the Secretary of State for a decision. This is obviously a more sensible approach than before, but still not wholly satisfactory, as it still does not provide a consistent mechanism for dealing with all objections.

Recommendation 5 – An earlier date should be considered for submitting objections to the OSA against determined admission arrangements.

16. The then Secretary of State confirmed that he would *'ask...officials to consider further how ...concerns might be addressed'*. Subsequent discussions have centred on a wish not to reduce the length of time that parents, particularly, have to object to arrangements. Currently arrangements do not have to be published until 1 May, with a cut off for objections three months later on 31 July. Because of the summer holiday period, with most schools closed (at least for part of that time), objections that arrive at the OSA towards the end of July cannot often be dealt with until the beginning of the autumn term – sometimes too late to have a decision publicised for the beginning of the following year's admissions round. This remains a serious concern.

Recommendation 6 – Due to pressure on the OSA over the summer months, the 'compliance exercise' should in future years be spread over the whole year.

17. It was agreed that there should be some flexibility in the way this exercise is conducted in future years, and is reflected by the smaller sample used for this exercise in 2010.

18. The following five recommendations (7-11), which were the result of specific exercises commissioned by the then Secretary of State, are subject to consideration by new Ministers as part of their discussions on revisions of admissions legislation and the Code.

Recommendation 7 – To improve clarity for parents, all admission authorities should be required to consult on, and publish arrangements for the admission of twins and children from multiple births. This should include specific mention within oversubscription criteria for primary schools.

Recommendation 8 – To meet the Code’s advice about enabling twins and children from multiple births to be allocated places together at primary schools, the list of ‘excepted pupils’ in the ‘class size regulations’ should be extended to include them.

Recommendation 9 – The current legislation and guidance on Random Allocation of school places in the Code is appropriate, and does not currently need to change.

Recommendation 10 – Consider further actions that could be employed beyond ‘withdrawal of places’ where it can be proved that parents have knowingly used deception to gain a school place.

Recommendation 11 – Clarify, through the Code or otherwise, that a parent who obtains a school place by deception, but does not have the place removed due to the LA or appeals panel considering the best interests of the child, would not be able to gain priority over other applicants by using a ‘sibling link’ for subsequent children in future years.

Review of the year 2009/2010

19. The period 1 September 2009 – 31 August 2010 has been very busy for the OSA. There has been a considerable increase over the year in parental interest, and challenge, particularly in the area of admissions. This year has also seen a change of Government with a consequent re-focusing of interest in our work.
20. I am grateful to both Secretaries of State, Ed Balls and Michael Gove, and to their Ministers, for putting time aside in their very busy diaries for regular meetings with me. I am also grateful to senior officials at the DfE for their willingness to find time, often at short notice, to discuss issues of mutual importance. Although adjudicators are independent of the DfE it is crucial that we retain a good working relationship.
21. I have also met during the year with individuals and groups that share an interest in our work, and have requested meetings, and I have sought out such meetings when it seemed to be appropriate.
22. At the time of writing last year's report there were nine adjudicators in post (including myself). Currently there are ten. At the end of March this year, Dr Peter Matthews OBE, who had been an adjudicator for five years, retired. At the same time two new adjudicators, Dr Stephen Venner and Mrs Carol Parsons, took up their posts. The increase of one adjudicator adds only marginal additional costs to the OSA, as apart from bi-monthly team meetings that all adjudicators are expected to attend, fees are related to the number of cases received by the office, not the number of adjudicators.
23. Adjudicators are only paid for the time actually spent on cases and related work. Fee rates have not been increased since 2007, and all adjudicators work hard to restrict their travel and other costs. Using figures in the expenditure table in *Appendix 2*, a simple sum dividing the total fees paid out by the number of cases would provide an average cost per case, but this would be misleading, as every case is different and requires a hugely variable amount of time to be spent on it. However, I do believe that our costs compare favourably with other tribunals, and that adjudicators provide good value for money.

Table 1 – Schools Adjudicators 2009/10

Dr Ian Craig	Chief Adjudicator
Andrew Baxter	
Canon Richard Lindley	
Dr Peter Matthews OBE	(until 31.3.2010)
Janet Mokades	
Alan Parker	
Carol Parsons	(from 1.4.2010)
Dr Elizabeth Passmore OBE	
John Simpson	
Dr Bryan Slater	
Dr Stephen Venner	(from 1.4.2010)

24. The qualifications and backgrounds of all Adjudicators can be found on our website at www.schoolsadjudicator.gov.uk
25. Although at one time there were sixteen adjudicators, at a time when the number of cases being dealt with was far fewer than now, I believe that the number of adjudicators we have now is about right.
26. The team of ten adjudicators (including the Chief Adjudicator) is supported by 5.8 full time equivalent staff in our Darlington office who double up as both administrators and case workers. Although our workload has increased this year, in order to be cost effective, this is one fewer full time equivalent support officer than we had last year. We also receive excellent 'call-off' support from two Treasury Solicitors (TSols) who ensure that our determinations are legally sound.
27. I believe with this small staff we provide excellent value for money in ensuring dispute resolution, equity and fairness in the provision of, and access to, school places across England.
28. Overall we dealt with 539 cases this year compared to 399 last year. The number of schools involved is of course much fewer as often a number of referrals relate to the same school. With the 'potential market' for our work being all state funded schools in England (approximately 23,000) adjudications still take place in a small proportion of the total.

Table 2 – Referrals by type 2008/09 and 2009/10

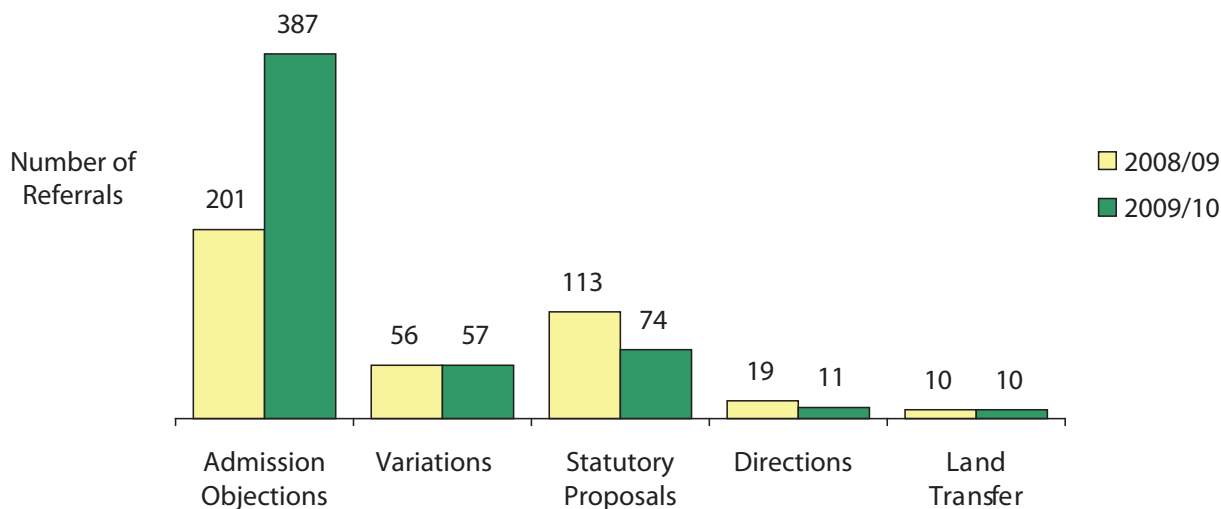
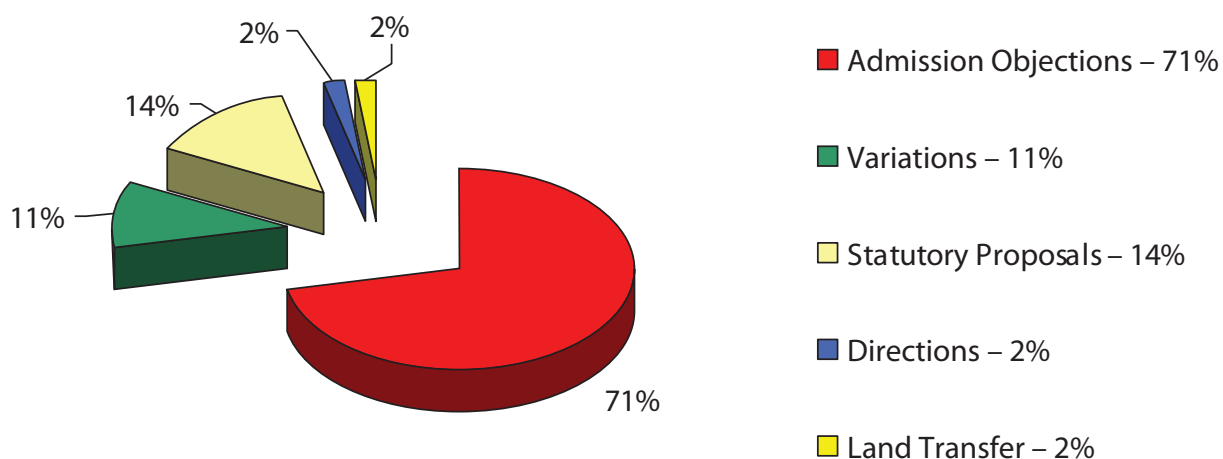
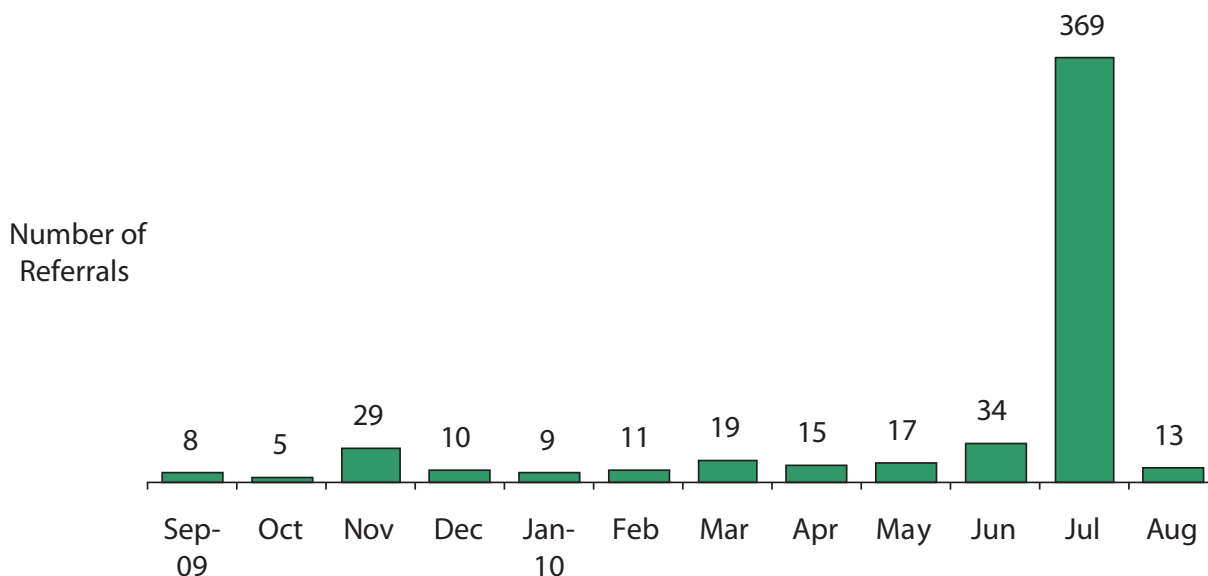


Table 3 – Percentages of total referrals by type 2009/10



29. Pressure on the team is mainly in the summer months, and this is particularly related to objections to admission arrangements. This pressure arises at a time when schools are closed and LA staff are often away on their summer holidays, thus delaying many adjudications until the autumn.

Table 4 – Spread of referrals month by month

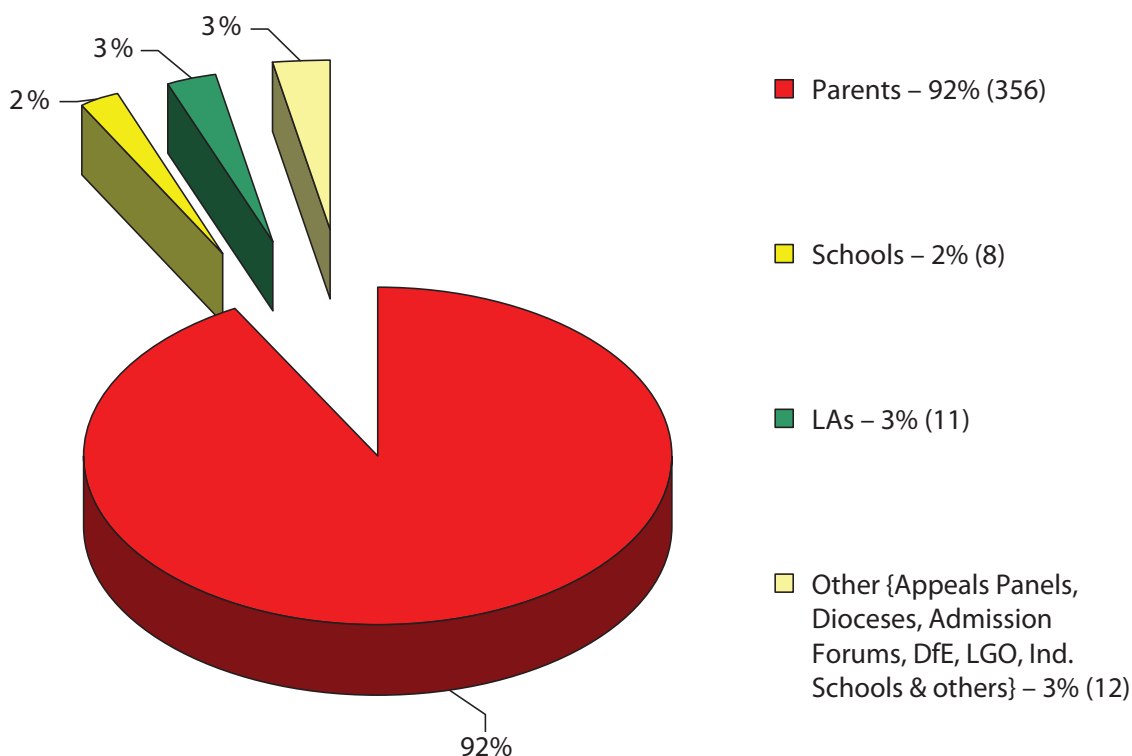
30. This year has seen the full implementation of the new School Admissions Code which came into force on 10 February 2010 (revised only slightly from the 2009 Code). Although we were beginning to see the implications of the changes made in 2009 at the time of my last report, this has been the first full year. The changes were generally well received by admission authorities. A recent independent report (*NFER, 2010*)¹ found that 82% of LAs found the new Code to be 'helpful' or 'very helpful', with only 7% being critical of it (the remainder were neutral).
31. The increase in parental challenges over the past year is, I believe, a testament to the breadth of the revised Code, and the guidance on appropriate practice contained within it.

Admission arrangements

32. Objections to admission arrangements have increased significantly this year to 387 referrals (201 last year). The vast majority received this year were from parents, which is to be welcomed, and is a significant difference from last year. This may be accounted for by increased parental awareness in objection processes brought about by publicity relating to the Code and by the work of the OSA.
33. The 356 parental referrals do not relate to 356 separate sets of school or LA arrangements objected to. In many cases one parent submits an objection, and in others several will work together to object. In others a number of parents will submit separate objections to the same school's or LA's arrangements.

1. Rudd P, Gardiner C and Marson-Smith H (2010) 'Local Authority Approaches to the School Admissions Process' (LG Group Research Report). Slough:NFER.

Table 5 – Origins of admission referrals



34. Adjudicators are again of a view (as they were last year) that in general arrangements are getting better, and most challenges are not the obvious errors and omissions that were found previously, but often relate to interpretation of the Code in the local context. These in consequence tend to be complex issues to deal with.
35. Once more we have seen the trend noticed last year of the same, or very similar, objections coming forward for the same schools when arrangements or local circumstances have not changed since the previous adjudication. This tends to waste adjudicator time and resources, and it would be helpful if this could be prevented in the future. Unless published arrangements or local circumstances have changed, then a determination should be valid for the lifetime of those arrangements.
36. Objections to aptitude testing have been forthcoming again this year, with some schools still employing tests that seem to be more related to ability testing (which is not generally allowed by the Code) than to aptitude. Adjudicators recognise that there is a fine line to be drawn between aptitude and ability testing, and this is often difficult to determine, even by experts in the field who we have in the past consulted.

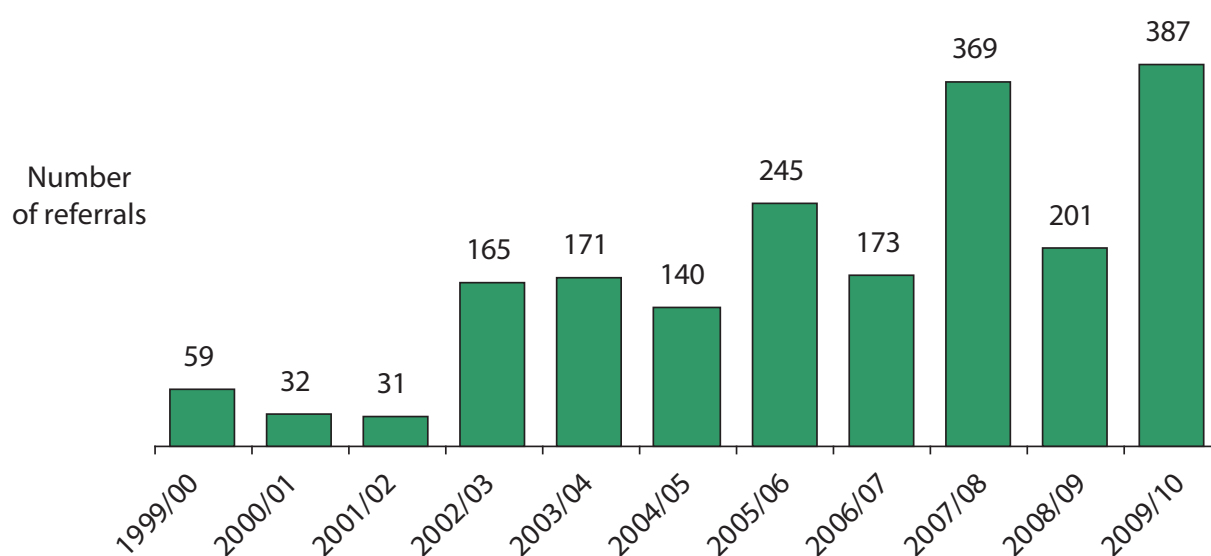
37. Adjudicators have been concerned on a number of occasions this year that many secondary schools with sixth forms seem ignorant of the fact that they must consult on, and determine arrangements for sixth forms as well as for the normal point of entry to the school (usually Year 7). Where they accept students from other schools into their sixth forms they are also required to consult on, and set, a separate Published Admission Number (PAN). Some also appeared to be unaware that academic requirements, where used, must apply equally to both internal and external candidates.
38. Faith schools are permitted by the Code (paragraph 2.46) to give higher priority in their admissions to *'children who are members of, or who practise, their faith or denomination'*. Issues have arisen again this year involving Voluntary Aided schools and diocesan authorities that are using faith criteria and associated points systems that fall outside this description, for example relating to involvement in activities that are beyond those that could reasonably be expected as part of religious membership or practise.
39. It has already been reported that changes have been made during the last year to involve the OSA in determining objections to Academy admission arrangements. However, the changes have provided only a partial solution to the problem, with ultimate responsibility for agreeing and issuing Academy determinations being retained by the YPLA, or by the Secretary of State. From a parental point of view, it would seem sensible to have one independent route through which they can object for all state funded schools rather than the mixed solution we now have. This is a particular issue as we are about to see more Academies (including Free School Academies) being created. There is an added issue that if different routes are being applied for different types of school, there could at some point in the future be a legal challenge relating to equity of treatment.
40. Some concern has been expressed during the year by some admission authorities about the Adjudicator's powers under s88I(5) of the School Standards and Framework Act 1998 (SSFA) (amended) to consider admissions arrangements that come to his/her attention *'by any means other than those in s88I(4)'*, for example, considering admission arrangements that come by way of comments from parents, or where the Adjudicator becomes concerned about arrangements when considering some other matter that is referred.
41. Adjudicators should not be expected to 'police' the admissions system, seeking out contraventions as a matter of course. They should only act on referrals where the referrer perceives there to be inappropriate application of legislation or the Code. However, once having had a set of arrangements referred to them, adjudicators must be allowed to continue to rule on other contraventions of legislation or of the Code that come to their notice during the course of their investigation. It would be a retrograde step to prevent adjudicators from taking action in these circumstances.
42. Referring to the School Admissions Code as a 'Code of Practice' is still widespread, even amongst LA officers. The School Admissions Code contains both regulation (which is compulsory for all admission authorities) and guidance, but the widespread use of the term Code of Practice gives the impression to schools, governors, parents and others that it need not necessarily be adhered to.

43. As shown by the LA reports, the majority of LAs (87.5%) believed that the admission arrangements of all schools in their areas (including Academies where they exist) are compliant with the mandatory aspects of the Code and admissions legislation. This is not totally borne out by the (albeit limited) compliance exercise reported later in this Report. Only 14 LAs (9%) in their LA reports indicated that they had either already referred, or were considering referring, schools to the OSA during the year.
44. During the period covered by this report, 151 admission objections were determined and published. Of these, 45 were fully upheld, 27 partially upheld and in 79 cases the objection was not upheld.

Table 6 – Decisions by origin of referral

	Upheld	Part Upheld	Not Upheld	Totals
Parents	20	7	47	74
Schools	5	4	19	28
LAs	12	13	4	29
Other	8	3	9	20
Totals	45	27	79	151

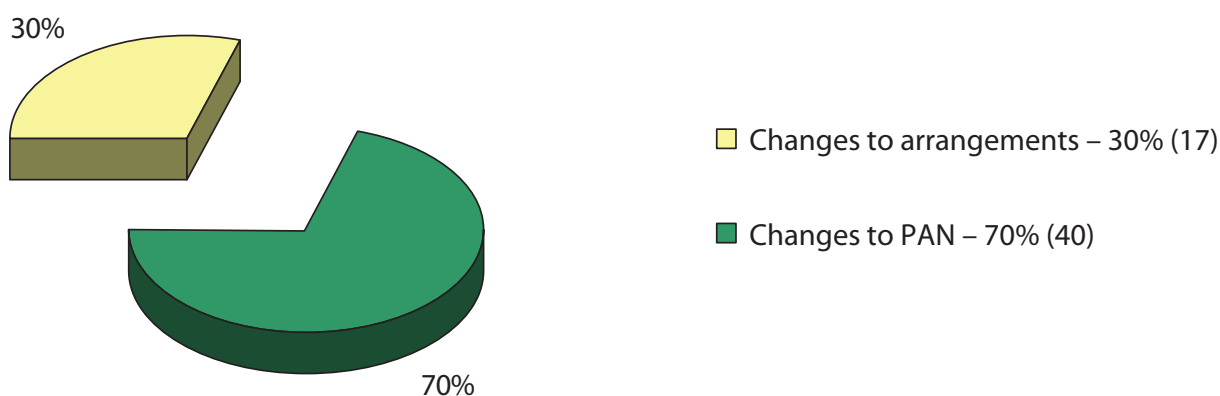
Table 7 – Admissions cases 1999/2010



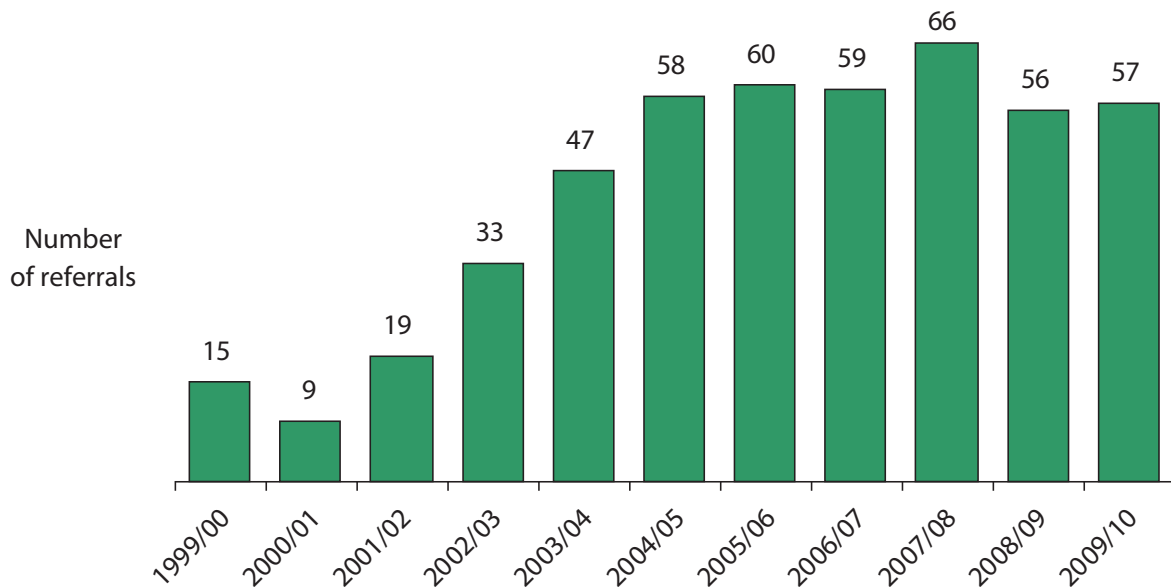
Variations

45. During the period covered by this report Adjudicators have dealt with 57 requests to vary admission arrangements, almost exactly the same as the 56 requests in the previous year.
46. Variation requests fall into two distinct categories (i) to vary the arrangements themselves, and (ii) to change a PAN. The arrangements, including the PAN, should only be set following consultation for a particular year, and a Variation is only allowed due to a significant change in circumstances.
47. Of the 57 variation referrals received this year 40 (70%) have related to changes in PANs and only 17 (30%) to the arrangements themselves.

Table 8 – Breakdown of Variation cases 2009/10



48. Many of the cases this year have been related to unforeseen pressure on primary school places due to increases in primary cohorts. As last year there have been some that should have been foreseen by admission authorities, and could have been consulted on through the normal processes, and others that were not so critical that they could not wait until the following year for full consultation.
49. During the period covered by this report 59 Variation referrals were determined and published. Of these 41 were fully approved, three were either partially approved or approved with modifications, and 15 were not approved.

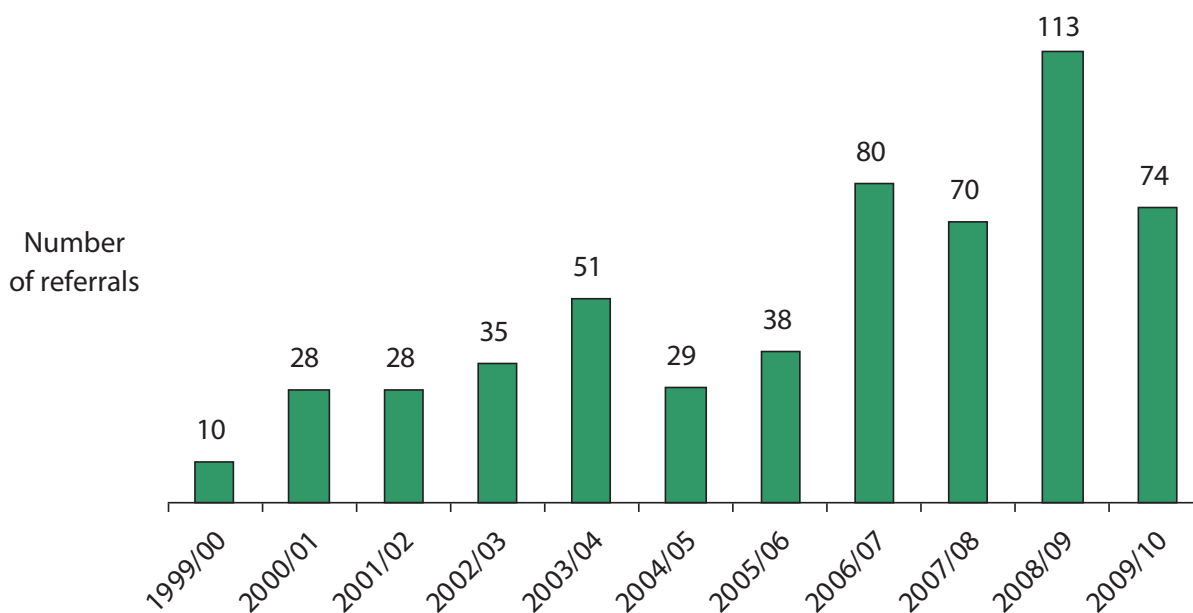
Table 9 – Variation cases 1999/2010

Statutory proposals

50. After a major increase in statutory proposals referred to the Office last year, with 74 referrals this year we seem to have returned to a level similar to that seen for the previous two years. Many of the proposals this year have once more been related to increased pressure on primary provision, and again referrals have come to us usually because of regulation rather than because of local disputes.
51. One of the reasons for the large number last year was reported to be delays on the building of new schools related to new housing developments, requiring revised opening dates for proposals that had already been agreed. We have seen fewer of this type of referral this year.
52. Some LAs are still failing to determine 'difficult' proposals within the two months required by regulation following the end of the consultation period. There is still evidence that although this is sometimes for understandable reasons (for example extended local political processes), at other times it seems to be to 'pass over' a difficult decision to an outside body, thus saving the LA from taking a difficult decision.
53. Several cases have been referred to the OSA this year involving LAs having committed themselves to major building projects before having completed their full consultation processes. In two cases adjudicators did not subsequently approve proposals that had been committed to. LAs and schools should not assume that determinations will go in their favour just because such commitments have been made.

54. Competitions involving LAs and other bidders are still very few – we have only had five referred in the last three years since the introduction of the regulation (one in the period covered by this report), and in three of the five cases (one this year) the competition has been awarded to the outside bidder. Competitions are *always* decided impartially on the merits of the bids.
55. During the period covered by this report, 73 statutory proposal referrals were determined and published. Of these 64 were fully approved, two approved with modifications and seven rejected.

Table 10 – Statutory proposal cases 1999/2010



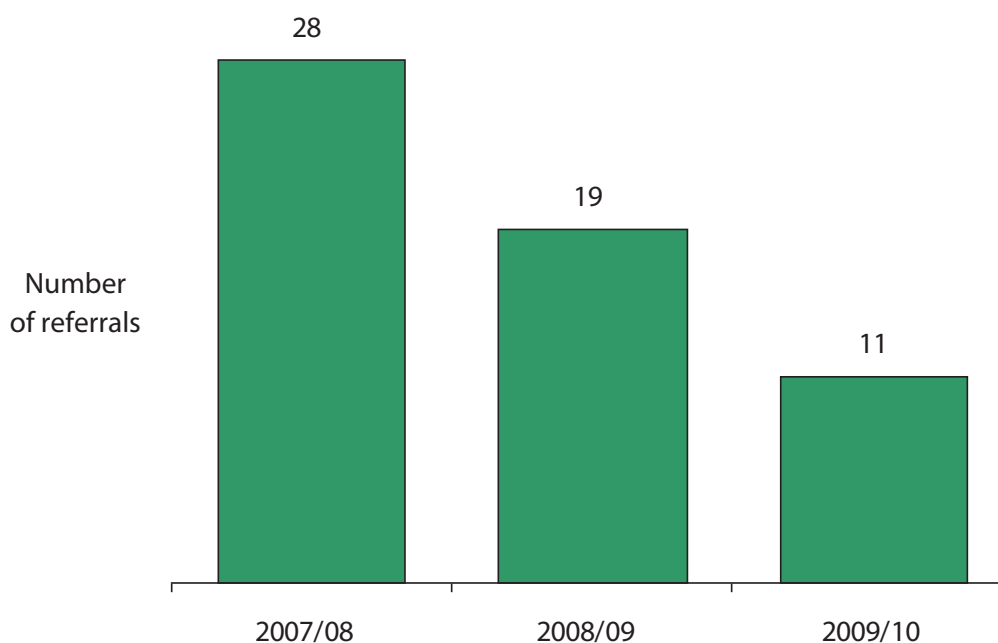
Pupil directions

56. Under Sections 96 and 97 of the School Standards and Framework Act 1998, as amended by Section 49 of the Education and Inspections Act 1996, in certain circumstances, schools may appeal to the Schools Adjudicator if they are directed to take a pupil and they do not want to do so. This aspect of our work only has a three year history.
57. During the period covered by this report the Office has only had 11 referrals, down from 19 last year, and 28 the previous year. This is excellent news. Last year my report linked the reduction to the wider use of FAPs across LAs. This year's LA reports show that FAPs are now well established which would account for this further reduction.
58. There is, however, evidence through referrals that direction procedures are not fully understood by some LAs and OAs, and are consequently at times not applied correctly. This is unfortunate as incorrect procedures often waste time at the

expense of the child involved. There is a need for LAs to more securely link their FAPs to be consistent with the legislation relating to directions.

59. Once more I would like to use this report to remind those who use their right of appeal against direction that with the needs of the child in mind, adjudicators will interpret the statutory timescales rigorously, and will deal with the referral as speedily as possible.
60. During the period covered by this report five Pupil Direction referrals were determined and published. Of these, two were upheld and three not upheld.

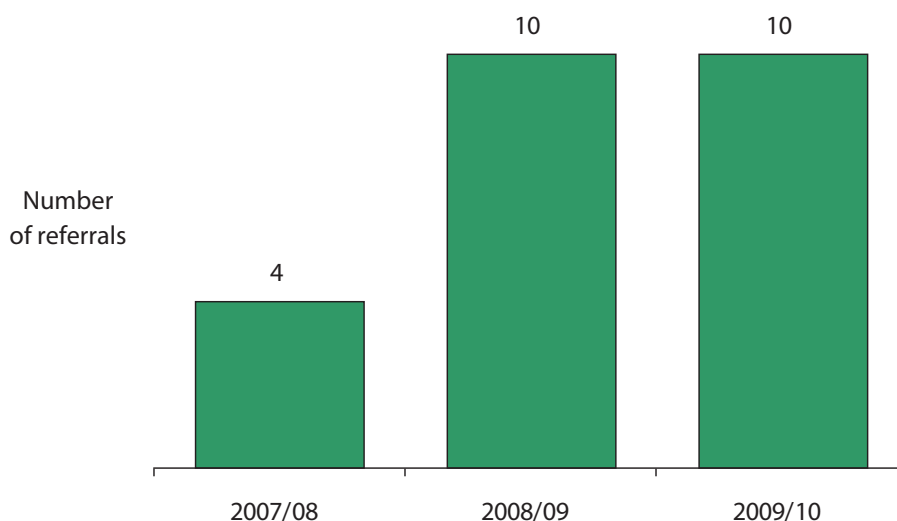
Table 11 – Pupil direction cases 2007/2010



Land Transfers

61. Land transfers remain a minor, but extremely time-consuming activity for adjudicators. Although the actual time spent working on such cases is not excessive, a great deal of information is usually required from a variety of sources which often takes weeks, or even months, to obtain. The numbers of referrals to the Office has remained stable this year at 10.
62. It is the nature of these disputes that by the time the Adjudicator gets involved, relationships between the parties have become very poor. However, a number of cases have arisen this year where the Adjudicator has been able to persuade the parties to reconsider their positions, and the case has been withdrawn without the need for a determination being made.
63. During the period covered by this report five land transfer referrals were determined and published. Of these, two were fully upheld, two partially upheld and one not upheld.

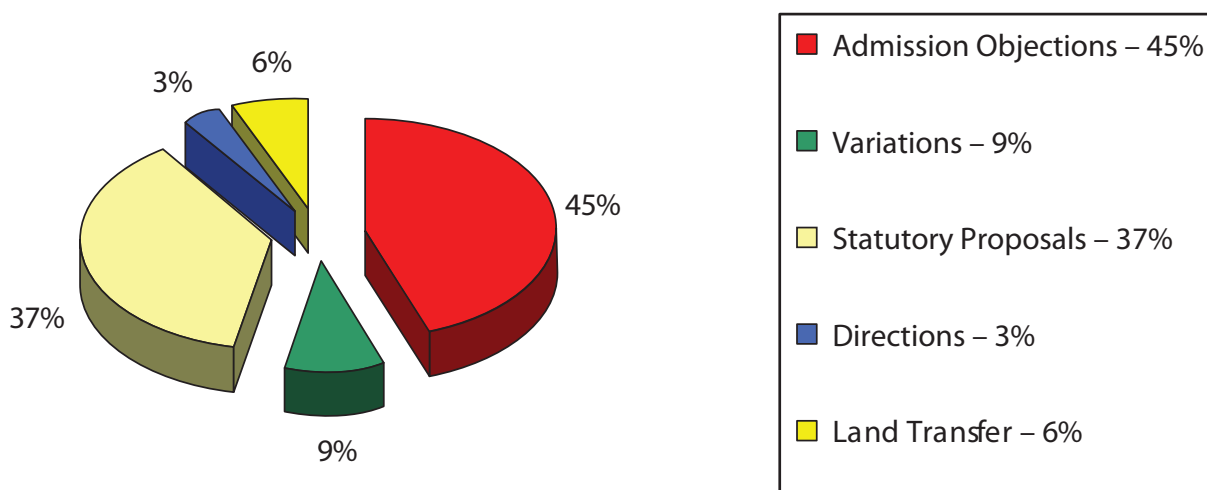
Table 12 – Land transfer cases 2007/2010



Other issues

- 64. The OSA team (both adjudicators and office based staff) have worked hard this year to deal with referrals quickly as parents, children, schools and LAs need to know the outcome of cases as soon as possible. Where decisions have been delayed it has usually been because required information was not forthcoming due to school holidays.
- 65. The percentage of time spent by adjudicators on different types of case (*Table 13 below*) is very different to the percentage of total referrals shown in *Table 3*. This is accounted for by (i) admission objections sometimes coming from multiple sources (often parents), which are capable of being dealt with together and (ii) high demands on time made by Statutory Proposals and Land Transfers.

Table 13 – Percentage of adjudicator time by case type 2009/10



66. This year has seen a considerable increase in the number of parents referring cases to the Office. As parents are the principal users of the school admissions system, this is to be welcomed. It would be helpful if any future legislation or revision of the Code maintained, or even improved, their access to us where they consider that arrangements are not legal or fair.
67. It has been drawn to our attention on a number of occasions this year, especially by parent organisations and appeals panels, that the word 'choice' is still being used widely to refer to 'preference', which both confuses parents and builds up expectations that cannot be met. The problem is further confused by 'Choice Adviser' posts which perhaps more correctly should be called 'Preference Adviser'.
68. Although we are not able to count 'visitors' to our website, it would seem that, along with most organisations, more and more use is being made by the public of web access. Although our website is good in many ways, it is over ten years old, cannot be upgraded, and is not 'user friendly'. We do not have the facility to add new fields, for example for Land Transfer cases, so the information we provide for the public is incomplete. It is therefore no longer 'fit for purpose'. We have been working closely with the Department to explore what might be done, recognising the constraints of the current tight financial situation.
69. Adjudications by their nature will not be welcomed by all parties to a dispute. Cases usually only come to us after discussions have broken down locally, and usually only one side of an argument will 'win'. What we must maintain is equitable and fair determinations that can be accepted, if not welcomed, by all parties.
70. Over the year we received six complaints, all regarding admissions cases. All the complaints were thoroughly investigated and responses were provided.
71. In one case, the OSA was found not to have followed its own published commitment and as a result procedures have been strengthened to ensure this does not happen again. One involved a complaint about the process used by the Adjudicator in coming to a decision. This was not upheld.
72. Four other complaints challenged determinations themselves. These complaints were not able to be resolved through the OSA complaints procedure, and complainants were advised to seek independent advice before taking any further legal action.
73. Judicial review proceedings were subsequently issued in respect of two determinations. In one case the Court refused the applicants permission to proceed, and the other was settled out of Court with the concession by the OSA of one point in the determination.

LA Reports 2010

74. The School Standards and Framework Act 1998 (as amended by the Education and Skills Act 2008) and the School Admissions (Local Authority Reports and Admission Forums)(England) Regulations 2008 (the Regulations) require all LAs to make a report to the Schools Adjudicator about the admission arrangements of schools in their area by 30 June each year. The regulations (and para 4.9 of the Code) set out the matters that reports must cover. The contents of these reports are collated to form an element of the Schools Adjudicator's Annual Report to the Secretary of State, which includes how LAs say that fair access is being achieved locally.
75. This is the second year that these reports have been required.
76. In addition to the prescribed information, the Secretary of State can ask the Schools Adjudicator to collect additional information to form part of his report. This year additional information was requested on Choice Advice, School Transport and School Uniform.
77. All 152 LAs submitted a report as required, although only 107 managed to do so by the due date (30 June), even though submission by the due date is a legal requirement.
78. This year Admissions Managers were asked to have their reports cleared by their Director of Children's Services (DCS) or other senior officer in order (i) to ensure that only information and comments approved at a senior level were received by the OSA, and (ii) to raise the profile of the return at senior level in every LA. 92 (61%) were signed by the DCS (or equivalent), four by the responsible cabinet member, three by the Admission Forum and the remainder at senior officer level.

Fair Access Protocols

79. This year, the overwhelming majority of LAs (145, 96%) confirmed that they have FAPs that had been agreed with all the relevant schools in their areas (ie. all maintained schools and Academies). Of the seven that did not confirm this, all have informal working arrangements in place while they get one or two reluctant schools to agree, or while they get final agreement in the autumn for revised protocols following previous agreements lapsing at the end of the 2009/2010 school year.
80. Most LAs confirmed that the FAP was working well in their area, with panels meeting regularly, some as often as fortnightly throughout term-time. Most LAs have Protocols and In Year Fair Access Panels (IYFAPs) that cover both primary and secondary schools, but some say that they do not need them for primary, due to the larger number of primary schools and the greater spread of surplus places in them.
81. Numbers of students being placed by panels vary greatly between LAs, and many say that numbers have increased this year, with a smaller number reporting a decrease. Where LAs commented on particular pressures they referred to the greatest number of cases needing to be resolved being at Key Stage 4.
82. Many FAPs have been reviewed during the year to reflect the requirements of the latest School Admissions Code.

83. Most LAs report that all schools in their areas are actively complying with the protocols and that 'commitment has been impressive'. One LA reported that *'the panel continues to be an example of how partnership working between schools and with the LA can work successfully'*, and many report successes where the panels are chaired by headteachers in rotation. Where there have been local issues relating to implementation of decisions, these have generally been dealt with satisfactorily, and protocols have often been adapted to make them acceptable to all schools.
84. Most LAs with Academies report that they have been working well with the protocols, but several report Academies resisting participation. A few LAs report that a number of schools *'pay lip service to the protocol, but at times resist the implementation'*.

Infant Class Size

85. The majority of LAs reported that all primary schools in their areas were complying with infant class size regulations. Of the 52 (34%) that said they had schools with infant classes above 30, most were exceeding the class size limit with 'excepted pupils' (paragraph 2.63 of the Code) or were taking 'qualifying measures' (paragraph 2.62 of the Code).
86. In the limited number of LAs having schools that did not fall under each of these categories, LAs confirmed that they have been working with them to ensure compliance by the beginning of the new school year, either by reducing the classes to 30 pupils or below, or taking qualifying measures.
87. As last year many LAs complained again about the poor quality of decision-making by some appeals panels considering class size appeals and their general lack of awareness about the limited flexibility open to them in these cases.

Admission Appeals

88. In response to paragraph 4.9a (iv) of the Code, LAs were asked whether the independent appeal panels dealing with their LA schools complied with the requirements of the Appeals Code. With the exception of six (4%) all said that they did.
89. Of the six, four reported that they had panel members who had refused advice from their Clerks on more than one occasion on decisions that were not in accordance with the Code, thus resulting in decisions that were both unfair and challengeable in the courts. Two reported compliant timescales not being met due to volume of work at certain times of the year.
90. When asked about the compliance of independent appeal panels for OAAs, it was reassuring to see only four (3%) LAs reporting knowledge of non-compliance. 105 (69%) were confident that OAA school admission appeals panels in their areas were compliant, many of them because either all or the majority of them 'bought in' to the LA scheme. There were however 43 (28%) LAs that answered 'don't know' to this question. Although it is understandable that LAs do not have specific access to the workings of many OAA admission appeals panels, it is part of their strategic role to ensure that appeals for *all* children and parents in their area are compliant, and any barriers that do exist for this should be removed.

91. Of the four that were considered to be non-compliant, two LAs reported evidence that the 'independent' panels seemed not to be acting independently, with a bias towards the schools in question, one had ignored the advice of the Clerk about compliance with the Code, and another had a decision referred to, and upheld by, the Local Government Ombudsman.
92. With so many appeals taking place each year there is a good level of confidence in the admission appeals process across the country.

Specific Groups

93. As last year all LAs were asked to comment on the extent to which admission arrangements for schools in their areas served the interests of **children in care, children with disabilities, children with special educational needs (SEN)** and **children from service families**.
94. All LAs said that their arrangements complied with the Code and served the interests of all these groups as required.
95. In terms of **children in care**, all LAs placed Looked After Children (LAC) first in oversubscription criteria, and ensured that where they found this not to be the case in OAA schools, they intervened to ensure this was amended. Many confirmed that LACs were monitored to ensure that school places are secured with the minimum delay when a child moves or requires alternative placement.
96. With reference to **children with disabilities** and **children with SEN**, similar confirmation was forthcoming. Many LAs reported that they either had changed, or were in the process of consulting on changing, their admissions policies to better meet the needs of children falling into these groups and not having Statements.
97. Many LAs reported that they do not have **service children** (or indeed the children of Crown servants also covered by paragraphs 3.27-3.29 of the Code) in their schools, as they had not been identified as such on Pupil Level Annual Schools Census (PLASC). This may be underestimating their presence, as identification in the PLASC is unlikely to provide a full picture.
98. Most LAs that had garrisons or bases within their boundaries or nearby had forces liaison officers (FLAs) on their Admission Forums, and in one instance had their FLA write this section of their LA report. In many of these LAs the Admission Forum debated service children issues regularly – one LA saying that it had particular problems with regular movements of large numbers of families in and out of the area.
99. Most admission authorities did not mention this group by name in their arrangements, but in some they were mentioned specifically within admissions criteria. Some LAs made special arrangements for this group so that they would not be disadvantaged by admissions timetables, and one LA named service families as a specific group to be prioritised by Choice Adviser support.
100. It was pointed out by two LAs that there was a potential conflict in the Code between paragraphs 1.78a and 1.83 which prohibit requesting information about parents' occupation, and paragraph 3.27 which assumes that this information is available for service children.

Effectiveness of Coordination

101. LAs were asked to report on their assessment of the effectiveness of their scheme for coordination for admission of pupils in September 2010.
102. All LAs thought that their schemes and processes were sound. As well as 'normal point of entry' applications, a number had also coordinated in-year applications for a number of years. However, there were others who thought that schools themselves coordinating in-year had worked well up to now, and centralising, which for the majority of applicants would add time to the process, was not required. Others were concerned about the workload required to take this on board at a time of budget constraint.
103. The close working relationships between neighbouring LAs, most involving regular meetings to ensure that coordination is working well, is worthy of note. LAs in and around London were particularly complimentary about the Pan-London scheme.
104. The incompatibility of IT systems between LAs seemed to be the main problem that was encountered when trying to coordinate across LA boundaries, and OAA schools.
105. Some LAs reported examples of schools contacting parents with offers direct. These were however few.

Compliance

106. LAs were asked whether or not admission arrangements for schools in their area complied with the mandatory requirements of the Code and admissions law.
107. 134 (88%) said that all schools were compliant. 18 (12%) reported that some schools were not and were asked to state what action they were taking to deal with this.
108. 14 (9%) of these said that they had either already referred, or were proposing to refer schools to the OSA (a total of 44 referrals). The remaining four LAs confirmed that they were at the time of writing their report working with the non-compliant schools and were confident that compliance would be achieved by 1 September.

Admission Forums

109. LAs were asked for the current details of membership of their Admission Forums. All LAs had Forums that reflected the complexity of their area, but a number, particularly the larger and more complex areas, commented that they found it difficult to provide a full breadth of membership with a restriction on them of 20 members. Some solved this by having sub-Forums operating in different parts of the LA area, and six (4%) exceeded the limit by up to eight additional members.
110. Only 14 (9%) LAs said that their Admission Forums were submitting their own reports this year, of which only seven were received in time to analyse for incorporation into this report – the other seven to be completed by the Forum in the Autumn. This is disappointing as current DfE guidance states that if produced the Forum report should *'accompany the local authority report which must be sent by 30 June each year to the OSA (as) this will help to inform the Chief Adjudicator's annual report on Fair Access to the Secretary of State'*. It compares unfavourably with 14 having produced reports by the same time last year with a further three to be completed in the Autumn.

111. Of the seven forum reports received by the end of August 2010, all were very different in format and content, but when read in conjunction with the LA Annual Report to the Schools Adjudicator they provided a broader understanding of the workings of the area and complemented the information that was provided there.
112. Most reports followed the guidance provided by the Admission Forum (England) Regulations 2002 as amended by SI 2007/192, by providing detailed breakdowns of trends within their areas. With the exception of one report, all contained considerable data provided by the LA broken down to individual school level. Most provided a number of recommendations, for the Forum itself for the coming year, schools and the LA.
113. Several forums took full note of the more recent guidance provided by the School Admission (Local Authority Reports and Admission Forums)(England) Regulations 2008, by producing a more strategic document. The Devon report was particularly interesting as it did not reproduce school level data but concentrated on analysis of broader issues encountered by the Forum over the past year, and included comparative 'benchmarking' data between Devon and other LAs.
114. The Devon report also details the Forum's obvious involvement with the LA in raising awareness of the admission processes within its area – also putting forward a recommendation to the DfE for a national awareness raising campaign on admissions processes and dates. This report in my view was 'best practice'.
115. DfE guidance also says that *'we would expect Admission Forums to be included in the production of the local authority report, or at least to have had sight of it before it is sent to the Schools Adjudicator'*. When asked whether the Forum had seen a copy of the LA report before it was sent to the Schools Adjudicator, disappointingly only 59 (39%) said that they had. A further 87 (57%) said that it was proposed to show them. It is assumed that in the remaining six (4%), which did not report that they had already, or were proposing to share the report, that it was not proposed to share it with the Forum!
116. It would seem to be good practice not only for Forums to see the LA report before it is submitted, but also to be able to debate and comment on the draft.

Free School Meals

117. LAs were asked to comment on whether the proportions of free school meal children had changed since last year, and whether there were any discernable disadvantages being shown to free school meal children through the admissions system, particularly in terms of them achieving equal numbers of preferences to non free school meal children.
118. The majority of LAs noted an increase this year in the numbers of children taking free school meals, sometimes significant, which they attributed to the economic problems nationally. It was obvious that more deprived LAs had seen a larger increase than others, and several large LAs reported a larger increase in the more deprived parts of their area.

119. Many LAs said that they were not able to comment on the relationship between free school meals and preferences as their databases would not allow such analysis without a considerable exercise in manual checking of pupil level data which they would find difficult.
120. Where they were able to undertake such an analysis, LAs generally were confident that there were no issues and that preferences from children entitled to free school meals were being met appropriately.
121. Some LAs said that their analyses identified a *higher* number of free school meal children obtaining their preferences. In these instances they considered that this was because these children often lived in areas where the local schools were less sought after, and therefore were often not oversubscribed. If parents chose them as their local schools then they usually gained places easily. In such areas parents are also more likely to apply for local schools, due to difficulties with transport if they attended schools further afield.
122. Several LAs were grateful for having been asked the question, as having analysed the data they had identified issues that they were now addressing, for example, through a review of catchment areas. The question has generated good local analysis and debate in at least one Forum.
123. One LA conducted an in depth analysis of their data and determined that the differences in achieving preferences for free school meal children could be accounted for by their failure to submit applications on time. Parental preferences generally were often not met for late applicants.
124. Several LAs commented that they countered the perceived bias against free school meal children achieving preferences equally with others by specifically targeting their Choice Advisers at this group.

Other Matters Affecting Fairness

125. Most LAs were content with the fairness of admissions in their areas, and could not identify any particular issues. Where they did identify them, there were few consistent themes, but issues mentioned by more than one LA were (in order of number of mentions):
 - pressure on places, particularly primary, and the consequent reduction in spare capacity in local schools, and lack of capital funding, which in turn impacts on preferences being delivered;
 - failure to apply on time particularly for reception entry, and the need for national publicity for the dates;
 - worry about the capacity to manage in-year admissions;
 - difficulties in managing the admissions process with a small number of OAA schools and Academies who consider themselves to be able to work outside the Code.

Choice Advice

126. 151 out of the 152 LAs in England had a Choice Advice service formally in place. The one that did not had only one school (middle deemed primary), so did not consider that it needed a formal structure.
127. The Code, Appendix 4.16, says that LAs *'must ensure that, as a minimum, Choice Advisers are not in the same management chain or reporting lines as the local authority's admissions staff'*, and this was confirmed by 145 (96%) of the 151 LAs. In the remaining six (4%), two were aware that they did not comply with the regulations, one of which only had one secondary school so considered that to have an independent service was not a good use of resources, and the other was in the process of changing line management to comply. In the remaining four, reporting lines were not clearly separated due to integrated service management structures, but steps were taken to try to protect their independence of action and advice.
128. The majority of LAs provided good evidence of effective provision to target those parents who most needed support, and good working relationships with other relevant agencies, particularly with those able to refer *'hard to reach'* parents to them.
129. All 151 Choice Advice services provided support at the point of transfer from primary to secondary school. 113 (74%) also provided it at the primary admissions stage, and 114 (75%) offered support with in-year applications (although there was a large correlation between these two latter groups, they were not exactly aligned). In 137 (91%) LAs Choice Advisers also give support to parents during the appeals process. In the remaining 14 (9%) LAs not currently providing support for appeals, six were proposing to offer it from 2010/11, although it is unlikely that these proposals reflected the potential impact of the reduction in the Area Based Grant only announced on 26 June 2010.

Transport

130. The Code Paragraph 1.98 says that *'Admission authorities must explain clearly whether or not school transport will be available and, if so, to which school and at what cost (if any). Information about school travel and transport options available to parents must be set out in the composite prospectus'*. LAs were therefore asked to confirm that they were complying with these requirements.
131. All LAs said that they were either generally compliant with the Code, or would be from 2011 (four having recognised that they needed to make changes to their prospectuses subsequent to this question being asked). The one issue that was raised by many LAs was that they did not, and could not, provide specific costs of transport for each school as this varied between schools and often between students. These LAs did however confirm that they provided signposts in their prospectuses to where parents could get this information.

School Uniform

132. Paragraphs 1.90 and 1.91 of the Code provide guidance on how governing bodies **should** ensure that the cost of school uniform does not inhibit the choice of school. LAs were asked to indicate if they were aware of any schools in their area that do not comply with this guidance.

133. Most LAs reported that they had few if any complaints about school uniform and that most schools complied with the guidance. If they had items of uniform that were not available in high street stores they were usually modestly priced items, for example badges or T-shirts with logos on them. Where they received complaints LAs reported that they would discuss them with the governors who usually responded positively. Several LAs reported that this question has prompted them to look more deeply into the issue in the coming term, and a number reported that it had been discussed as an issue at their Admission Forums.
134. Only one LA reported that it was a serious issue in its schools and the Citizens' Advice Bureau had written a report scoping the problem which was being followed up by the LA with some further research in the Autumn. One other LA suggested that the 'guidance' in the Code on school uniform should be 'musts' rather than a 'shoulds'.

Other issues

135. As last year, the LA reports provide a good and positive picture of how school admissions are being managed across England. Possibly because the 'new' Code is now established and understood, they provide a much more positive picture than last year.
136. Some debate has taken place about the value of LA reports. I do believe that it is useful, annually, for there to be a 'return' made across the country on the fairness of the admissions system. LAs are in the best position to do this as part of their local strategic role. However, if the LA report is to be retained it needs to be much more limited in its requirements than at present. I have reservations about the prescription of the information required by the regulations – the most valuable information is in my opinion that requested additionally, for example, this year on choice advice, uniform and transport. Perhaps the regulations in the future could be more flexible. The Chief Adjudicator or the Secretary of State should be able to ask for information that is pertinent at the time to inform the national picture. This will enable a confirmation, or otherwise, across the whole country, of the trends seen through adjudications.
137. The 'required' information also prescribes what data is collected and included, which LAs quite rightly say is often difficult to collate, or is already available elsewhere from other returns given to the DfE.
138. Views have been expressed that some LA reports may be bland due to their public nature, and possible local political considerations. An option would be to transfer the responsibility for the annual report back to Admission Forums, but I do not believe that this is a valid option as their reliance on LA support and data may not lead to an improved report.
139. My preferred option for the future would be to retain the LA report with few or no 'prescribed' questions, and a requirement to have it discussed/reviewed (or possibly approved) by the Admission Forum prior to its submission, leaving open the ability for the Forum to submit its own report, or supplementary comments, if it wished to do so.
140. Although I believe that LA reports, and a national summary of them, are important, in view of my comments elsewhere in this document about the OSA's need to focus on its judicial role, a debate should take place on whether the OSA, or the DfE, should be the recipient of the LA reports.

OSA Compliance Exercise

141. On 1 February 2010, the then Secretary of State asked the Chief Adjudicator to carry out a third annual compliance exercise, evaluating the admission arrangements for 2011 within a sample of local authority areas. This exercise took place in June and was more limited than in the previous two years, looking only at 14 LAs (9% of the total) plus all OAAs in these 14 LA areas.
142. It is important to note that the compliance exercise was desk based and only considered the admission arrangements which appeared on LA and OAA websites. The Code requires admission arrangements to be published on the websites, where they exist, of all admission authorities by 1st May. As in previous years this 'health check' was superficial, looking only at a limited number of issues. The exercise does not look in depth at many issues that could subsequently be challenged through the normal adjudication process, and cannot be assumed to offer a 'clean bill of health' for any admission authority involved.
143. Overall, the quality of LA school admission websites continues to improve and many examples of good practice can now be found.
144. Of the 14 LAs, 12 (86%) met the requirement to have their determined arrangements (and those of all the schools in their area) for 2011 published on their LA websites by 1st May. This compares with 53% of last year's sample. Whilst this is a significant improvement, the concern, expressed last year, is still that the opportunity for parents in a minority of LAs to consider whether to object to arrangements before the deadline of 31st July is reduced.
145. Because of their special status within admissions legislation, children with Statements of SEN should *not* be included in oversubscription criteria. Only one LA this year (7% of the sample) included children with SEN statements in their oversubscription criteria compared with 14% which did so last year. Whilst all LAs that used a social and/or medical needs criterion as part of their primary school oversubscription criteria explained what supporting evidence would be required, only 11 out of 13 (85%) did so in relation to their secondary school arrangements.
146. The failure to make maps showing catchment areas and/or parish boundaries easily available is a cause of concern. Whilst it is acknowledged that there are practical issues relating to the inclusion of a large number of maps in general school admission booklets, it is relatively easy to state clearly that parents should consider maps where relevant and to outline the means of accessing the relevant maps. There were issues relating to the availability of maps in five out of 14 (36%) LAs in relation to primary schools and seven out of 14 (50%) in relation to secondary schools. This pattern is repeated in relation to both primary and secondary school OAAs.

LA Arrangements for Primary Schools

147. All LAs (compared to 83% last year) complied with the statutory requirement to publish admission numbers for primary schools.
148. Compared to last year, there was a marked improvement in the proportion of LAs who included clear definitions of distance (13 out of 14 or 93%), an improvement on the 69% who did so last year. However nine out of 14 (64%) still lacked clear definitions of siblings. Similarly, 13 out of 14 (93%) LAs had clear tie breakers compared to 79% last year.
149. Progress in matters relating to early years was less secure. Six out of 14 (43%) LAs did not include a clear statement on deferred entry to primary school and three out of 14 (21%), compared to 30% last year, did not clarify that a separate application must be made for transfer from nursery to primary school.

LA Arrangements for Secondary Schools

150. There is much variation in the detail LAs provide about sixth form admission arrangements. For example, some do not provide details of sixth form admission numbers and varying degrees of detail are given about academic entry requirements. Some local authorities provide no information at all about sixth forms.
151. Twelve out of fourteen (86%) LAs had clear tie breakers compared to 78% last year.

Own Admission Authorities (OAAs)

152. Most OAAs have taken good steps to comply with the requirements of the Code. The following findings are set in the context of arrangements which, the evidence suggests, also meet the needs of parents. The comments are designed to support the work being undertaken by LAs, Admission Forums and governing bodies, which has the objective of further enhancing admission arrangements so that all parents and children can benefit from a system which is clear, objective and fair.

Primary OAAs

153. In the majority of LAs in the sample, there were a large number of primary school admission authorities, and the adjudicators had difficulty accessing many of their websites. Therefore, they were unable to provide an accurate assessment of the extent to which primary schools comply with the requirement to publish arrangements online. In the six local authorities where, due to fewer numbers of schools, it was possible to access the websites of own admission authority primary schools, 112 out of 156 (72%) met publication requirements.
154. The main area of non-compliance regards clarity about how an admission authority will objectively ascertain whether a child meets faith related admissions criteria. This is especially so in relation to some Church of England schools. Unclear references are made to the importance of membership of a faith, the existence of links between a family and a church, being a practising member of a faith, regular attendance at services, commitment, support for a Christian ethos, and commitment to faiths other than that in the school's formal designation. A related point is that it is frequently not clear whether a SIF is also required and, if it is, how to access one. All of this is confusing to parents and is an area which would benefit from much clearer definitions.

155. In addition, a small number of faith schools have a requirement that applicants demonstrate involvement in church activities beyond those that could reasonably be expected as part of religious membership or practice, as part of their faith based criterion. This is in breach of the Code (para 1.78e).
156. Other than matters concerning faith, the three main areas of non-compliance of primary school admission authorities are: a failure to explain that a separate application must be made for transfer from nursery to primary school; a lack of clear and unambiguous statements about the right to defer; and lack of information about how social and/or medical needs will be determined. In a small number of cases, these needs are referred to without them being formally included in a school's oversubscription criteria or, unacceptably, such needs are used as tie breakers.
157. In a very small number of schools, LAC are still not given the status they are legally required to have, and children with SEN are erroneously included in oversubscription criteria.
158. A small number of schools do not provide a clear definition of siblings or do not include a clear and unambiguous tie breaker.

Secondary OAAs

159. In the majority of LA areas, accessing secondary school websites was easier than primary with adjudicators finding that only 41 out of 87 (47%) published their admission arrangements as required, although this average hid a wide range, with no schools in three LA area doing so. This was only a small improvement on last year's overall percentage and very disappointing, as it diminishes parents' and other schools' ability to challenge arrangements.
160. The four main issues in relation to secondary OAAs were (in rank order):
 - difficulties in accessing maps of catchments areas or parish boundaries;
 - difficulties in ascertaining whether a SIF is required and, if so, how to access one;
 - complex, points based oversubscription criteria, usually in 'faith' schools, that are not directly related to religious observance or practice and/or unlikely to be easily understood by parents;
 - lack of information about admission arrangements for sixth forms.
161. Where schools used aptitude tests as part of their admission arrangements the description of the methods for testing aptitude were often unclear or appeared to be invalid. In some cases no indication was given of what the test would involve.
162. As with primary schools, in a small number of schools, children with SEN are erroneously included in oversubscription criteria. A similar number of schools that refer to social and/or medical need provide no information about the evidence they require to support an application based on these grounds.

Other issues

163. This year's exercise was more limited than previous years and shows an improving, if still mixed, picture of compliance. There have been improvements in most of the areas adjudicators examined, but there remain significant gaps in compliance, particularly in the arrangements and processes of OAAs. The picture provided by our sample is significantly less positive than that provided by LAs in their own assessments as reflected in their own reports (summarised in Section 6 of this report).
164. The reluctance, or inability, of so many admission authorities to publish their arrangements by 1 May, as required by the Code, is still a major concern as it reduces the ability for parents and others to object in time for adjudications to take place which can have effect from the beginning of the applications process in September.
165. The delivery of an annual compliance exercise by adjudicators is costly and resource intensive at a point in the year when there is considerable pressure on adjudicator time. It can only be a sampling activity (unlike the LA report which covers every LA area), and reliant on the accessibility of websites. It would seem more appropriate for such 'policing' activity to be carried out by LAs, admission forums, other schools and parents, leaving them to refer arrangements to the OSA if they consider them to be non-compliant with the Code.

Fraudulent and misleading applications

166. In July 2009 the then Secretary of State asked the Chief Adjudicator to undertake some work to establish the scale of fraudulent or misleading admissions applications to schools. The report was delivered to the Secretary of State on 1 October 2009. As the work for this report took place during the reporting year 2008/09, a summary was included in last year's Annual Report, and the full report was published on 1 November 2009.
167. Following receipt of the report the Secretary of State asked the Chief Adjudicator for a further report on the same issue to be delivered by 28 February 2010, together with further *'recommendations on how the problem should be addressed, including proposals on how to strengthen deterrents, bearing in mind the need for further sanctions to be legitimate and proportionate'*.
168. A second report, based on information from all 152 LAs in England (rather than the 123 in the original report), as well as face to face meetings with 28 LAs and meetings and correspondence with others, particularly parents and some of their representative groups, was delivered to the Secretary of State on 26 February 2010.
169. The second report contained 15 recommendations which were generally accepted, and officials were to be asked to consider how they could be dealt with, particularly with reference to changes to the Code. Obviously these recommendations now need to be considered afresh by the new Government.
170. The full report and recommendations can be found on the OSA website at www.schoolsadjudicator.gov.uk

Concluding comments

171. 2009/10 has been the busiest year since the OSA began, both in terms of numbers of cases and their complexity. *Appendix 1* shows that the number of cases actually dealt with during the year was 714 rather than the 539 cases that were referred to us and appear in the Tables. This is because 175 cases were still in progress at the end of August 2009, and carried forward for completion during this year. This was due to the fact that considerable numbers of referrals, particularly admissions related, were received towards the end of July, and could not be dealt with due to many schools being closed over the school holiday period. There will be a similar carry-forward this year for the same reason.
172. This report inevitably identifies areas that can be further improved. That is its major function. However, this should not mask the very positive messages that it also contains.
173. The expertise shown by adjudicators, by our office staff in Darlington and by our solicitors, has continued to be impressive. I have been appreciative over the year of the many positive comments I have received about our work, and how it is contributing to equity and fairness across the school system. By its nature our work deals with disagreements and disputes that have failed to be resolved locally. By the time they come to us the protagonists are often entrenched in their views. Our task is to resolve such disputes so that all involved at least consider that they have been treated fairly, even when they do not win their argument. I believe that we do this well.
174. A school system as complex as ours cannot exist without recourse to dispute resolution, and if the OSA did not exist, the role would need to be established elsewhere. Our strength is in our independence from the DfE, as a tribunal. Our determinations are therefore seen by most people to be impartial.
175. It is therefore important for the OSA to restrict itself to its 'judicial' function and not be required to 'police' the admissions system on behalf of the DfE.
176. As our school system becomes more complex, I believe that the same independent tribunal service, and clear referral routes, particularly for parents, should be made available for objections and challenges to all schools in receipt of state funding.

177. Because of our structure, employing a limited number of highly competent adjudicators who work from home on a fee basis, thus only paying them at an hourly rate when actually working, the fact that this rate has remained constant since 2007, and the very slim 'back-office' structure in Darlington, we have managed to keep costs low, as shown in *Appendix 2*. Where fees and salary costs have risen this year, it reflects the increase in referrals. 'Legal fees' also of course relate to numbers of referrals, but also to the increased time needed to scrutinise ever more complex issues coming to adjudicators. The increased cost of legal training for adjudicators is also reflected in the additional sums spent under the 'training' heading. The significant increase in 'publicity' is due to a change in legislation requiring notices to be placed in local newspapers signposting determinations following their publication.
178. As a further commitment to reducing costs we have also not produced a printed version of this report this year, and are relying mainly on web access. In order to make the download easier and cheaper to access we have restricted the colours used in the report, and cut out photographs to reduce both the ink used and the number of pages to be printed.
179. The OSA has always been, and remains, very cost effective, providing the very best possible value for public money.

Recommendations

180. Due to the change of Government part way through the year covered by this report, many of the recommendations made in last year's report (repeated again in Section 4) and those made relating to Fraudulent and Misleading Applications in February this year (repeated in Section 9) are still awaiting consideration by new Government ministers. I will not repeat them again below.
181. Throughout this report issues have been raised that will hopefully generate debate and action. It was tempting to translate every issue raised into a recommendation. I have however only listed as major recommendations those that I consider to be the most important.
182. **Recommendation 1** – There should be one consistent, independent route through which all interested parties can object to the admission arrangements of all state schools for determination (paragraph 39).
183. **Recommendation 2** – The annual LA Report should have fewer prescribed headings, allowing for its focus to change year by year, to give a better national picture of the issues that are particularly pertinent at the time (paragraph 136).
184. **Recommendation 3** – There should be a requirement on LAs to have their annual reports discussed/reviewed (or possibly approved) by their Admissions Forums prior to submission, leaving open the ability of the Forum to submit its own report, or supplementary comments, if it wished to do so (paragraph 139).
185. **Recommendation 4** – There should be a requirement for LAs to confirm to the DfE, by mid May each year, that their arrangements and those of all their own admission authorities (OAAs) in their areas (including sixth form arrangements and supplementary information forms), are published on their websites in accordance with the Code (paragraphs 144, 153, 154, 159, 160 & 164).
186. **Recommendation 5** – The annual compliance exercise carried out by adjudicators should be discontinued and alternative arrangements put in place (paragraph 165).

Appendices

Appendix 1 – Case details 2009/2010 and 2008/2009

Objection to admission arrangements	2009/10	2008/09
Total referrals	520*	201
Decisions issued	151	59
Decisions outstanding	359	133
Out of Jurisdiction	6	3
Withdrawn	4	6

* 387 new referrals and 133 decisions outstanding from 2008/09

Variation to admission arrangements	2009/10	2008/09
Total referrals	80*	56
Decisions issued	59	29
Decisions outstanding	12	23
Out of Jurisdiction	1	1
Withdrawn	8	2

* 57 new referrals and 23 decisions outstanding from 2008/09

Statutory Proposal	2009/10	2008/09
Total referrals	89*	113
Decisions issued	73	93
Decisions outstanding	9	15
Out of Jurisdiction	1	3
Withdrawn	6	0

* 74 new referrals and 15 decisions outstanding from 2008/09

Pupil Directions	2009/10	2008/09
Total referrals	11	19
Decisions issued	5	15
Decisions outstanding	3	0
Out of Jurisdiction	0	2
Withdrawn	3	2

Land Transfer	2009/10	2008/09
Total referrals	14*	10
Decisions issued	5	6
Decisions outstanding	0	4
Out of Jurisdiction	1	0
Withdrawn	8	0

* 10 new referrals and 4 decisions outstanding from 2008/09

Appendix 2 – OSA Expenditure 2009-2010

Category of expenditure	2009-10 £000	2008-09 £000
Adjudicators' fees	401	363
Adjudicators' expenses	27	28
Office Staff salaries	206	168
Office Staff expenses	5	11
Adjudicator training/meetings	10	6
Legal fees	177	126
Publicity	79	35
Consultancy fees	0	7
Administration/consumables	15	12
Total	920	756

Note: the financial information relates to the two last full financial years 2008-09 and 2009-10. This overlaps with the period of this report but does not coincide with it.

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