Office of
the Schools
Adjudicator

Office of the Schools Adjudicator Report of our work

1 September 2019 to 31 December 2020

May 2021

Contents

Introduction and executive summary

1. This report to the Secretary of State for Education (the Secretary of State) covers the period 1 September 2019 to 31 December 2020.

2. In the period covered by this report, the number of new cases submitted to the Office of the Schools Adjudicator (OSA) rose from 257 in the previous reporting year to 1031 by 31 August 2020 and to 1388 by 31 December 2020. This dramatic increase was driven not by objections to admission arrangements but by requests for variations to determined admission arrangements for 2021 in consequence of the Covid-19 pandemic and I say more later about this in this report. Against that background, and with the agreement of the Department for Education (DfE), I have extended the period covered by the report beyond its usual end date of 31 August until the end of the calendar year 2020 so that I can report on how the OSA handled this additional work. As always, I hope that the findings drawn from adjudicator casework and from reports made to me by local authorities in accordance with section 88P of the School Standards and Framework Act 1998 will be of use to the Secretary of State, his Ministers and their officials, local authorities, faith bodies, academy trusts and school governing boards. This report covers an extremely challenging period for all those working in and with schools. I want to say early in this report how impressed adjudicators have been in our encounters in the course of our work with the resilience and professionalism of school leaders and their staff and with that of the staff of faith bodies, local authorities and academy trusts.

3. Part 2 of the report summarises reports made to me by local authorities in accordance with a template provided by the OSA. In the light of the Covid-19 pandemic and with the agreement of the DfE, I reduced the scope of the template so that it covered only those matters which the School Admissions Code (the Code) requires to be covered. This means that I did not ask about and so cannot report on such areas as elective home education and the use of the pupil premium.

4. Covid-19 affected adjudicator casework in two ways. First, our consideration of objections to admission arrangements was delayed as we took the decision not to approach schools direct in the early days of the national lockdown which started in March 2020. Secondly, as indicated above, large numbers of admission authorities sought variations to their determined arrangements. These included selective schools seeking changes to testing arrangements and schools with a religious character seeking to change arrangements which gave priority for admission on the basis of levels of attendance at worship which could not be met when places of worship were closed.

5. Along with every other organisation, the OSA has had to change its ways of working. Adjudicators have always been home based so for us the change in our day to day working lives has been limited. It has not been possible for adjudicators to visit schools and so we have arranged on-line meetings when necessary. Our secretariat, in common with so many others, had to adapt overnight to working from home and communicating with each other, adjudicators and the wider world in new ways. Technology has enabled us we hope to remain effective in our work. We have also

benefited from the time we invested in the past two years in our electronic case management system.

6. We began the year with 61 **objections to and referrals of admission arrangements** which had been made in the previous year but not completed. A further 123 new objections and referrals were made by the end of August 2020 and a final one by the end of December 2020. We had completed 152 cases by the end of August 2020 and 29 more by the end of December 2020. Of the completed objections and referrals, in 57 cases the complaint was upheld, in 44 it was partially upheld and in 68 it was not upheld. Five cases were withdrawn and seven were found to be outside our jurisdiction.

7. At the beginning of the reporting year we had seven requests for **variations** carried forward from the 2018/19 reporting year. By 31 December 2020, we had received 1115 requests for variations relating to Covid-19 and six requests by the DfE for advice on variations to the admission arrangements of academies in relation to Covid-19. Two requests for variations relating to Covid-19 were outstanding at the end of 2020. We also received 99 requests for variations not related to Covid-19 and had completed 97 by the end of 2020.

8. The number of referrals of a local authority's notice of intention to **direct a maintained school to admit a pupil** combined with the number of cases where the Education and Skills Funding Agency (ESFA) on behalf of the Secretary of State **requested advice on the admission of a child to an academy** was 44, 35 of which were received in the academic year 2019/20 and a further nine between 1 September 2020 and 31 December 2020. Eight **statutory proposals** were referred to us compared to three the previous year. We received no requests to resolve disputes relating to **land transfers**.

Shan Scott

Chief Adjudicator

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Part 1 - Review of OSA work in the period 1 September 2019 to 31 December 2020

9. As noted in the Introduction and Executive Summary, the overall number of cases referred to the OSA in the academic year 2019/20 was much higher than in any previous year. However, if the number of requests for variations resulting from Covid-19 is removed the number of cases referred to us in the period 1 September 2019 to 31 August 2020 falls to 239, compared to 257 in 2018/19 and 198 in 2017/18.

10. We began the year carrying forward 61 admissions cases and nine other cases. The number of new cases began to rise from February. While there is a deadline for objections to admissions arrangements which means that this element of our work is seasonal and peaks in the summer, other types of case can be and are referred at any point of the year. Thus, it is almost inevitable that some cases will be carried forward from one reporting year to the next.

Figure 1: Referrals by type academic year 2018/19 and 2019/20

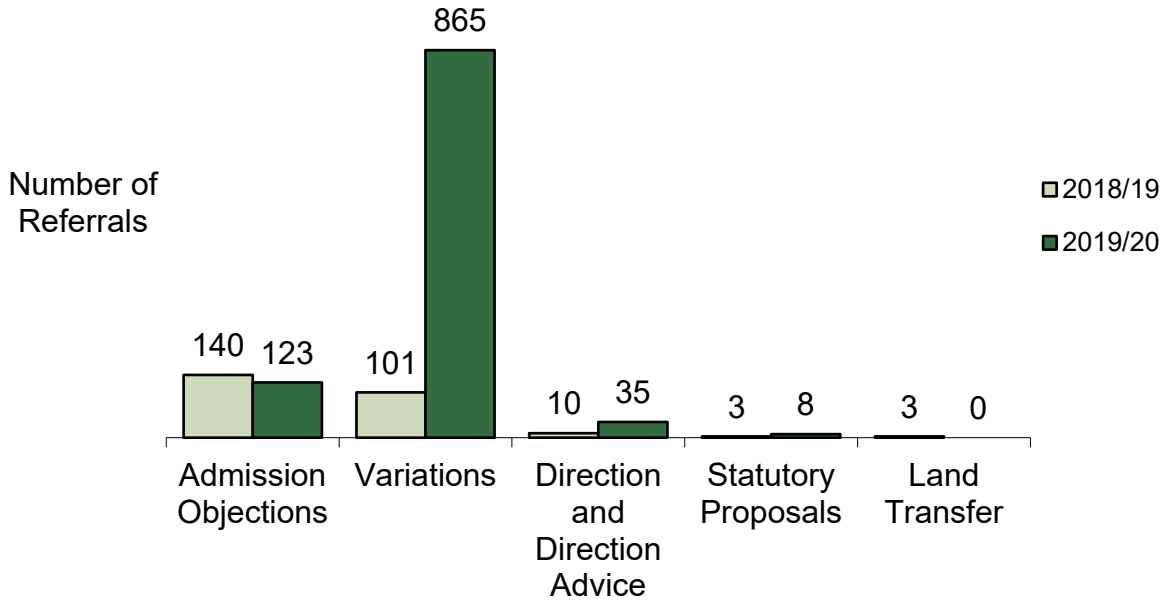
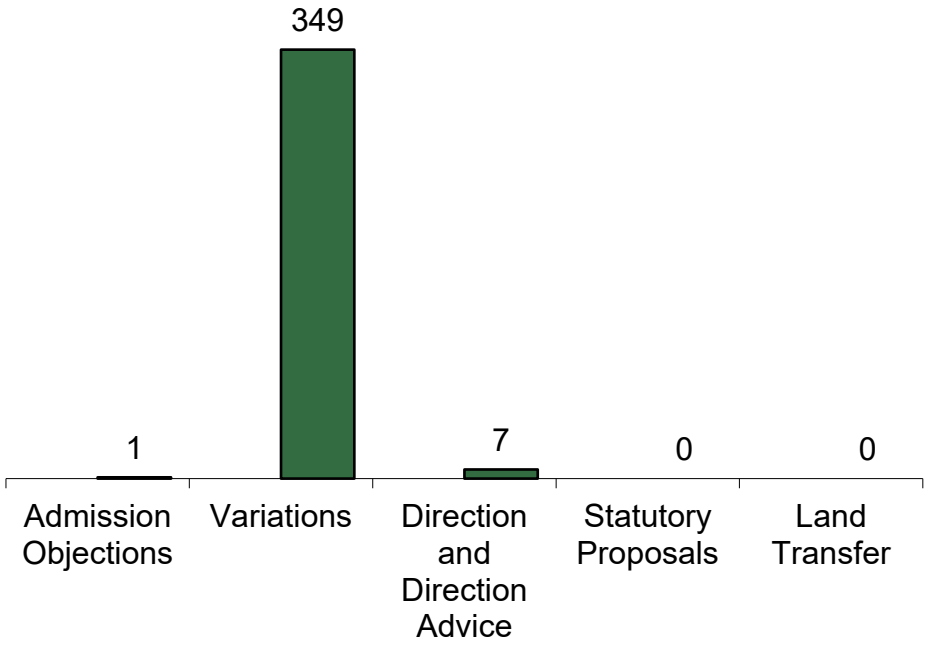


Figure 2: Referrals by type 1 September 2020 to 1 December 2020



Admissions

Objections to and referrals of admission arrangements

Table 1: Admissions cases by year and outcome

	1 September 2020 – 31 December 2020	Academic Year 2019/20	Academic Year 2018/19
Number of cases considered	33	184	177
Number of new cases	1	123	140
Cases carried forward from previous year	32	61	37
Number of individual admission authorities within new cases	1	95	92
Cases finalised	29	152	116
Objections fully upheld	4	53	25
Objections partially upheld	8	36	38
Objections not upheld	17	51	41
Cases withdrawn	0	5	3
Cases out of jurisdiction	0	7	9
Cases carried forward into following year	4	32	61

11. The 123 new cases received by 31 August 2020 this year related to 95 individual admission authorities. As in past years, new cases related to all categories of schools with 19 concerning the admission arrangements for community and voluntary controlled schools in 14 local authorities, 32 for 31 individual voluntary aided schools, two for two foundation schools and 70 for 48 individual academy schools, including free schools. As last year, non-compliant arrangements were found for every category of school, including schools where the admission authority is a local authority, a board of governors or a multi-academy trust. Parents and members of the public between them remained the single largest group of objectors, accounting for almost 60 per cent of all objections. Local authorities and the governing boards of other schools also made objections. Table 1 above gives the outcome for each case completed. Of those 140 cases where a conclusion was reached (that is the finalised cases minus those withdrawn or out of

jurisdiction) by 31 August 2020, 27 were found to have no fault in their arrangements (meaning that the objection was not upheld and no other breaches of the requirements were found). I was glad that we were able to reduce the number of cases that had to be carried forward from 31 August and that 29 of these were completed by 31 December 2020. Of those 29, 17 were objections which were not upheld and eight were objections which were part upheld. The remaining four were referrals in which the arrangements were found not to conform with the requirements relating to admissions.

12. Objections covered a wide range of matters. Some concerned alleged failures to comply with specific Code or statutory requirements including giving priority to staff other than those who work at the school concerned or a failure to meet the requirement in the Code to set out clearly how home addresses will be determined. This latter point was sometimes linked to quite complicated provisions about the length of time a family had to live in a property and how addresses would be determined if a family owned a property elsewhere. I very much appreciate the need for admission authorities to ensure that – where priority is given on the basis of where someone lives – admission authorities are able to guard against fraudulent applications. However, it is important that in doing so they make clear what the requirements are and that these can be justified. As in previous years, there were objections about failures to consult on changes to admission arrangements. Other objections were made on the basis that the arrangements lacked clarity or that what was published on an admission authority's website as the admission arrangements was sparse and to find the full details required the enquirer to search through different documents and websites. I say more below in paragraphs 16 - 18 about particular concerns about the way some local authorities conflate or combine admission arrangements with their co-ordinated scheme and/or composite prospectus.

13. At the heart of many other objections – particularly those from parents – were concerns that the particular arrangements chosen, while not in breach of specific requirements, were not fair to a particular group of children. Examples included objections to catchment areas – drawn so that all children have a high level of priority for at least one school – that result in some children not having priority for their nearest school. Such catchment areas can be fair and reasonable and serve the interests of all children especially as many schools simply do not have the capacity to cater for every child for whom the school is the nearest. It is, however, entirely understandable that parents living close to a particular school but outside its catchment area will feel it is not fair to them. Objections were also made on the basis that a catchment area falling entirely within a local authority boundary was contrary to the case law of the Greenwich judgment[1]. In fact, the Greenwich judgment does not prevent catchment areas which fall within local authority areas or necessarily rule out catchment area boundaries which are to some extent coterminous with local authority areas as was made clear in the

[1] R v Greenwich London Borough Council, ex p Governors of John Ball Primary School (1989) 88 LGR 589, [1990] Fam Law 469

Rotherham judgment.[2] Other objections concerned the effect of giving priority to children of alumni and the effect of removal of priority for siblings if a family moved more than a certain distance from the school. Objections were made to proposed reductions in published admission numbers (PANs) on the grounds that the reduction could affect the local authority's duty to secure the provision of school places and/or frustrate parental preference.

14. As in past years, we received objections to the arrangements of a number of grammar schools including a significant number from one individual concerned about the use of the same test for children unable for good reason to take the test on the main test date, the giving of priority to children entitled to the pupil premium and use of age-standardisation in tests. The relevant determinations made clear that the use of the same test for late sitters was capable of being fair; that the giving of priority to children entitled to the pupil premium was explicitly contemplated in the Code and that the use of age standardisation in selective school tests is entirely appropriate.

15. As the table above shows, significant numbers of objections are not upheld. I continue to be concerned where objections are used as a way to try and bring about changes in the Code, the law or Government policy. However, in many cases where objections are not upheld, the objectors are parents who would simply and understandably prefer a school to have arrangements that gave their child a higher priority. Against that background, and in the context of the unprecedented demands on schools, I want to thank school governors and academy trustees and the staff of academy trusts, local authorities, faith bodies and above all school staff for their professionalism and good humour in their interactions with adjudicators and with our secretariat.

16. I now turn to a particular concern this year about the relationship between admission arrangements, co-ordinated admissions schemes and the composite prospectus. Every admission authority must determine its admission arrangements by 28 February for the following year. Every local authority must also, whether or not it is the admission authority for one or more schools, agree and publish a co-ordinated admission scheme and draw up and publish a composite prospectus.

17. As paragraph 14 of the Code says, "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." Co-ordinated admission schemes are by definition different from admission arrangements. Co-ordinated admission schemes describe the process by which individual local authorities co-ordinate the applications by parents for places, the

[2] R v Rotherham Metropolitan Borough Council, ex p LT and others [1999] Lexis Citation 3923

exchange of information about preferences expressed by parents between admission authorities and finally make offers of places for schools in their area. The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 set out the requirements for schemes. As paragraph 2.20 of the Code explains, each local authority's scheme must be formulated and published on the local authority's website by 1 January of the relevant year so by 1 January 2020 for admissions in September 2021.

18. Adjudicators have found instances where the local authority concerned is treating its co-ordinated admissions scheme as if it were the determined admission arrangements for schools for which the local authority is the admission authority. As the co-ordinated admissions scheme is a technical document designed for a different purpose such practice is unlikely to meet the requirement of the Code that parents should easily be able to understand how places for a particular school are allocated. I have in previous reports expressed concern about instances where the first time admission arrangements for schools for which the local authority was the admission authority were published in an accessible and easily available format was in the composite prospectus which does not have to be published until September after determination, so far too late for objections to be made. The co-ordinated admission scheme, determined arrangements and the composite prospectus are different things which serve different purposes and must each be produced and published in accordance with the relevant prescribed timetable.

Variations to determined admission arrangements of maintained schools

19. Once determined for the relevant school year, admission arrangements can only be varied, that is changed, in limited, specified, circumstances. An admission authority may propose a variation if it considers there has been a major change in circumstances and such proposals for a maintained school must be referred to the adjudicator. Proposed variations to academy arrangements are a matter for the Secretary of State. As noted above, this year the DfE sought the adjudicator's advice on a number of proposed variations to the admission arrangements of academies. Some variations, for example to comply with a mandatory requirement of the Code, do not require approval by either the adjudicator or the Secretary of State as the case may be.

20. As noted in paragraphs 2 and 7 above, this year was exceptional in terms of requests for variations to admission arrangements. I have dealt separately with the requests for variations relating to Covid-19 and other requests for variations. I deal first with variations not related to Covid-19.

Table 2: Variations to admission arrangements – non Covid-19

Variation to admission arrangements	1 September 2020 – 31 December 2020	Academic Year 2019/20	Academic Year 2018/19
Total cases dealt with	40	80	120
Decisions issued: approved	29	41	64
Decisions issues: part approved/modified	2	2	2
Decisions issued: not approved	4	14	11
Decisions outstanding	2	14	7
Out of Jurisdiction	2	2	26
Withdrawn	1	7	10

Notes on table

The total of 80 dealt with in 2019/20 comprises seven cases carried forward from 2018/19 and 73 new cases. The total of 40 dealt with from 1 September 2020 to 31 December comprises 14 cases carried forward from 2019/20 and 26 new cases. Thus a total of 99 new cases were received between 1 September 2019 and 31 December 2020.

21. I have commented in past reports on the number of proposed variations to reduce the determined PANs of schools. By 31 August 2020 we had received 65 proposals for variations to reduce PANs and a further 21 were received by 31 December 2020. There will be occasions where it is entirely appropriate to reduce the PAN for a school after the arrangements have been determined. However, I reported last year my concern that in six cases we had been asked to approve such reductions year on year for the same schools and that it should have been possible to plan ahead and consult on a reduced PAN. Where changes are made to arrangements by variation, as distinct from via the normal process for determining, there is no consultation and no scope to object to the adjudicator. Moreover, while some bodies are required to be notified of variations, this does not include local parents. Against that background, I am disappointed that we again received requests for PAN reductions for nine schools which had been the subject of requests for reduced PANs in previous years. Most of these were from the same London borough and related to schools which had been the subject of proposed variations as many as four times.

22. Admission authorities should note that a number of these requests were turned down and should be in no doubt that adjudicators will reject proposed variations where they are not satisfied that a variation is justified in response to the change of

circumstance identified by the admission authority. We are particularly concerned about proposals for such variations which are made after the publication of the composite prospectus and before the deadline for applications for places as this means that parents may well be expressing preferences without knowing that the number of places available might change. Adjudicators will also bear in mind that PAN reductions have the effect of reducing the overall availability of places in an area and that there is no scope to object if the reduced PAN is retained in later years. PAN reductions unaccompanied by changes to the school estate also have the effect of breaking the connection between the school's physical capacity to admit children and the number it is required to admit. It goes without saying that all this is very different from proposed reductions in PANs at any point in response to emergencies such as a building or part of a building becoming unusable for any reason.

23. The number of requests to approve variations to reduce PANs was hugely overshadowed by requests for variations in response to the Covid-19 pandemic. The DfE consulted adjudicators and others about the guidance it issued[3] in July to admission authorities about the scope to change admission arrangements in response to Covid-19. These requests fell into two groups, those relating to schools with faith based admission arrangements and those relating to schools with some form of selection test – for banding or for selective places. In addition, the DfE asked for advice from the adjudicator on a number of proposals to vary the admission arrangements for academies in response to Covid-19.

24. Taking schools with faith based admission arrangements first, closure of places of public worship and limits on numbers able to attend when places of worship were open for public worship meant that children and their parents would not be able to satisfy the faith-based oversubscription criteria used by many schools with a religious character. I was glad to be able to work, along with the DfE, with representatives of the Church of England Education Office, the Catholic Education Service, diocesan officers from both denominations and with the Office of the Chief Rabbi to design and implement processes to allow adjudicators in the case of maintained schools and the DfE in the case of academies to deal speedily with the very many hundreds of applications for variations. By the end of December 2020, adjudicators had approved or approved with modifications a total of 1075 requests for variations to faith based arrangements in the light of Covid-19 of which six related to Jewish schools; 977 to Church of England schools; 78 to Roman Catholic schools, eight to schools designated as Church of England and Methodist, five to schools designated as Roman Catholic and Church of England and one to a Methodist school. In addition, four requests were out of jurisdiction, 12 were withdrawn and two were outstanding at 31 December 2020. These figures do not include variations for academies which were dealt with by the DfE. In general, the variations sought were to provide that any requirement in the arrangements to attend public worship in order to

[3] Coronavirus (Covid-19): changes to faith school admission arrangements. Coronavirus (Covid-19): assessment processes for selective schools.2

gain priority for a place would not apply where places of public worship were not available for such worship. I explain in paragraph 34 that we did not in considering these proposed variations scrutinise the arrangements as a whole. However, we did note that a significant proportion of schools had arrangements giving priority for places on the basis of attendance at worship without specifying the required frequency of worship or the period of time over which such worship had to be sustained. It is necessary that how often and for how long attendance is required is set out for arrangements to be clear (as required by paragraph 14 of the Code) and so that parents can "easily understand how any faith-based criteria will be reasonably satisfied" (as required by paragraph 1.37 of the Code). Where arrangements were not clear in this respect, the variations were approved with a modification in accordance with the adjudicator's power to make such modifications and after consultation with the admission authority.

25. The relatively low number of requests relating to Catholic schools compared to the number of such schools can be explained by the fact in many such schools priority is given on the basis of a child's being baptised or received into the Catholic church meaning no variation was necessary. For those Catholic schools which do take account of attendance at worship, the Catholic Education Service had advised schools that the Certificate of Catholic Practice widely used across many dioceses already allowed for the closure of places of worship so again there was no need for variations. Clearly, those schools with a religious character which do not have faith based arrangements at all or which do not take account of attendance at worship did not need to seek variations.

26. Where arrangements have been varied, admission authorities will be able to apply their faith based admission arrangements which now reflect the fact that places of worship have been closed. Where arrangements which take account of worship have not been varied but take account of attendance of public worship during periods when places of public worship were closed it may not be possible for parents and/or children to meet the criteria concerned. It follows that admission authorities will not be able lawfully to give priority on the basis of the oversubscription criterion or criteria concerned. Instead, they will need to use their other oversubscription criteria.

27. The table below sets out the numbers of cases relating to Covid-19 in schools with a religious character as at 31 December 2020.

Table 3: Covid-19 related variation cases for maintained schools – numbers and outcome

Faith/Denomination	Numbers of cases approved/approved with modification	Number of applications not approved, withdrawn or out of jurisdiction	Number outstanding
Church of England	977	12	2
Catholic	78	3	0

Faith/Denomination	Numbers of cases approved/approved with modification	Number of applications not approved, withdrawn or out of jurisdiction	Number outstanding
Jewish	6	0	0
Methodist	1	0	0
Methodist and Church of England	8	0	0
Catholic and Church of England	5	1	0
Totals	1075	16	2

28. As far as the two proposed variations to arrangements related to Covid-19 outstanding at 31 December 2020 are concerned, in both cases the adjudicators had not been able to complete the cases before the end of term because they were waiting for necessary information, so the two cases were carried forward into 2021.

29. I turn now to requests for variations to testing arrangements again relating to Covid-19. For these schools, the challenges faced were different from those relating to attendance at worship but no less real with concerns about the safety of bringing large numbers of children from different primary schools together for tests.

30. Adjudicators received 22 requests for variations to testing arrangements. These included proposals to delay the dates of tests and/or to replace tests with teacher assessment. 19 of these were approved and three were not. In addition, as noted above, the adjudicator gave advice to the DfE on variations requested to the testing arrangements for six academies. The approach taken by schools varied according to their circumstances and the type and purpose of the testing used. Many schools, acting in accordance with the DfE guidance, opted to delay their tests and sought approval for the necessary variations. One consequence of delayed tests was that families would not receive the outcome of the tests before the 31 October application deadline. In order to mitigate the effect of this, some local authorities opted to change their co-ordinated scheme so that applicants had the ability to express more preferences than usual for the schools they would like their child to attend. By allowing parents to express, say, six instead of four preferences, parents could name both grammar schools and non-selective schools and so help to manage the uncertainty inevitably caused by not knowing whether their child had reached the academic threshold required to be eligible for a place at a particular grammar school.

31. The options open to schools which felt that they could not safely carry out tests varied according to the nature of their selective arrangements. For schools with partial

selection by ability or aptitude permitted by section 100 of the School Standards and Framework Act (often known as pre-existing partial selection), the proportion of places for which priority may be given on the basis of ability or aptitude "must not exceed the lowest proportion of selection that has been used since the 1997/98 school year"[4]. Some schools within this category sought variations explaining that they wished to remove their partial selection for admissions in 2021 only and thereafter to reinstate this. The adjudicator explained that the primary legislation would not allow such reinstatement at any point in the future, because of the provisions of section 100. Admission authorities had the option to withdraw the request for a variation and continue to test or to go ahead with the variation knowing that the removal of selection would continue in perpetuity, subject only to the separate provisions which do allow the introduction of partial selection by aptitude for up to ten per cent of places in certain subjects under section 102 of the School Standards and Framework Act.

32. So far as schools which use banding are concerned, the issues and potential solutions were different again. Some schools which use banding replaced a test with teacher assessment or on-line tests which could be taken at the children's homes. Other schools proposed not assessing children at all and simply applying the oversubscription criteria used within bands to all applicants. However, section 103(3) of the School Standards and Framework Act restricts variations to banding arrangements to those designed to achieve one of the three permitted objectives of banding. These are set out in paragraph 1.25 of the Code as being an intake representative of either the full ability range of applicants for the school, the range of ability of children in the area or the national ability range. This means that a variation which would not be designed to achieve one of these objectives is prohibited by law. Applying oversubscription criteria such as proximity to the school would in most cases lead to an intake representing the socio-economic area around the school rather than one of the three permitted ability ranges. If the use of distance without banding did lead to an intake representative of, say, the ability range of those who applied then there would be no need for complex and expensive testing process to achieve that outcome in the first place. Proposals for variations which would breach section 103(3) could not be approved. Where the allocation within bands was by random allocation, then extending this to all applicants without the use of bands was seen as likely to produce an intake representative of the full ability range of applicants for the school in just the same way as it would produce an intake representative of the heights or other characteristics of the applicants.

33. Where variations to banding could not be approved, it was invariably the case that the arrangements did not meet some of the requirements of the Code concerning banding and so the admission authorities were required to revise those aspects of their arrangements and could in so doing address the difficulties caused by Covid-19. This was usually achieved by replacing distance with random allocation, sometimes within a restricted geographic area where it could be shown that this area was sufficient to

[4] See paragraph 1.22 School Admissions Code.

provide the full range of ability of applicants. By 31 December we had considered and made decisions on 22 proposals to vary testing arrangements in maintained schools and given advice to DfE on six proposals to vary testing arrangements in academies.

34. Because of the number of these proposed variations – by which I mean both those concerning schools with a religious character and those involving one or another form of selection - and the need to deal with them speedily so that admission authorities could operate their arrangements for 2021 admissions, we drew up bespoke and pared down procedures for their handling. These meant that we did not consider any other aspects of the arrangements and made clear in our determinations that it could not be inferred that the wider arrangements did or did not conform to the requirements relating to admissions. In a further departure from our usual practice, I decided that we would not publish all of the determinations relating to Covid-19 on the OSA website. We are required by law to publish some categories of determination but not those of variations. Our policy is to publish all determinations (other than those which relate to individual children) in the interests of transparency. However, the sheer scale of the task in terms of the number of variations and the need to focus available resources on processing the requests led me to decide that we would not publish the determinations of variations related to Covid-19. We have, however, published a table which can be found https://www.gov.uk/government/publications/coronavirus-covid-19-variations-to-determined-admission-arrangements which gives the name of the school, local authority area, faith body where relevant and some other information about each such case. Copies of the determinations themselves are available from the OSA on request.

35. In the light of approaches to the OSA from schools and others I want to say something about the implications of these variations (and indeed other variations) for arrangements for 2022. It has become clear to me that there is a lack of understanding of the effect of variations. Where requested variations to determined arrangements for a given year are approved (or if an admission authority varies its arrangements in response to a determination by an adjudicator) before the arrangements for the following year have been determined, these varied arrangements form what might be described as the baseline or the starting point for the following year's arrangements. If an admission authority wishes the arrangements as varied to continue for 2022 (in this case) it does not need to consult (unless consultation is required for any other reason), since the arrangements will be unchanged from those for the previous year. It will nevertheless need to determine that these are its arrangements for 2022, since annual determination is always required, even when arrangements remain unchanged. By contrast, a school which wished to revert to the arrangements which were in place before the variation would have needed to consult before determining arrangements which differed from the arrangements as varied. It would also continue to have the option in some circumstances to seek a further variation to the 2022 arrangements once determined.

36. The DfE advice I refer to above addresses this point where it says, "Admission authorities are asked to note that, if they vary their admission policy for 2021 entry but then wish to revert to their previous policy for 2022, they must consult on it for any six weeks between 1 October 2020 and 31 January 2021 in accordance with the provisions

set out in paragraphs 1.42 – 1.49 of the Code."

37. There is an important exception to this general rule. As also noted above, many schools which use testing as part of their arrangements varied their arrangements to delay the dates of those tests from late in the summer term when children were in year 5 or early in the autumn term of year 6 to later in the autumn term. Paragraph 1.32c of the Code requires admission authorities to "take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October…." By delaying tests for very good reasons and in accordance with the DfE guidance, admission authorities often could not provide parents with the results of the tests before 31 October. It must be hoped that for admissions to schools in 2022, the extraordinary circumstances which pertained in 2020 will be in the past and that admission authorities will be able to hold their tests at the more normal time. Varying their arrangements for 2022 in order to reinstate earlier testing dates is a change in order to meet a provision of the Code and so does not require consultation.

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

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

Table 4: Directions to schools to admit pupils and advice to the Secretary of State on requests for a direction to an academy

	1 September 2020 – 31 December 2020	Academic year 2019/20	Academic year 2018/19
Total cases considered	9	35	10
Maintained schools – decision to:			
• Admit the child	0	4	2
• Not admit the child	0	0	0
• Direct to another school	0	0	0
Advice to Secretary of State to:			
• Admit the child	5	14	0
• Not to admit the child	0	10	3

	1 September 2020 – 31 December 2020	Academic year 2019/20	Academic year 2018/19
Decisions outstanding	2	2	0
Out of Jurisdiction	2	0	2
Withdrawn	0	5	3

39. These cases are given the highest priority by OSA staff and adjudicators as they involve children and young people who may be missing education. For maintained schools, a direction can only be made by the local authority (other than for a looked after child) where that child has first been refused admission to or permanently excluded from every school within a reasonable distance of the child's home. It is not enough for the child to have been referred to and considered under the local Fair Access Protocol (FAP). I am glad to be able to say that in all cases referred to us in the year ending 31 August 2020 the necessary procedures for maintained schools had been followed. Not all directions by local authorities to maintained schools or requests to academies result in a referral to the adjudicator or a request for the adjudicator to provide advice involve the OSA. Wider information about the number of directions made by local authorities and on requests to the Secretary of State for academies to admit children is included in Part 2 of this report.

40. The number of cases where the ESFA sought the adjudicator's advice on requests by local authorities to direct academies to admit children rose from three in 2018/19 to 30[5] in 2019/20. This increase reflects a decision by the ESFA to seek the adjudicator's advice in more such cases rather than any change in the number of requests to the Secretary of State for directions to academies.

41. There are two points emerging from these cases this year which I wish to comment on, both relating to looked after children. First, some directions for looked after children are made across local authority borders, often where children have had to be moved away from their home area at short notice and without there being an opportunity before the move to consider schooling. When a decision is then to be made about where the child is to attend school it is important that the directing authority and the authority where the child is living as well as the school which is to be directed should all work together. The directing authority is responsible for the child but is unlikely to have the same level of knowledge of the relevant schools as the local authority where the child is to live. Second, we have dealt this year with a number of cases which involve looked after sibling groups all requiring new school places. In these cases, it is important that the

[5] 30 requests for advice of which 24 concluded, four withdrawn and two outstanding at 31 December 2020

question of whether the children need to attend the same school (which may also be the school attended by another family member where the children are placed in kinship care) is considered.

Discontinuance and establishment of and prescribed alterations to maintained schools

42. The number of statutory proposals referred to the OSA remained low, although somewhat higher than the previous year (eight referrals compared to three in the previous year). All the cases were completed in year. One case was withdrawn by the proposer but subsequently re-submitted and was then approved as were all the other cases. Between them they concerned the closure and related opening of schools (usually referred to as “amalgamations”) for special and mainstream schools, closures of schools, changes to age ranges and expansion of premises. Some of the cases were before the adjudicator because they related to proposals which must always be determined by an adjudicator or because the right to refer a case to the adjudicator following determination by the local authority was exercised. Others, however, should have been determined by the local authority for the area and came to us because the local authority had failed to make a decision within the two months allowed by law for this purpose.

Land matters for maintained schools

43. We began the year with two land cases which had been referred to us in June 2019. They were both in the same local authority area and both took longer to complete than should have been the case because, as I reported last year, inaction by the local authority meant that registration of land transferred by operation of law was not completed when it should have been. Both cases were completed in November 2019. We have received no further land cases in the period from 1 September 2019 to 31 December 2020.

Part 2 - Summary of local authority reports 2019

44. In the Introduction and Executive summary of this report I explained that the template sent to local authorities in March 2020 was shorter and covered only those matters which the Code requires to be covered. Thus I did not ask about such areas as elective home education and the use of the pupil premium. The template did, however, continue to provide for local authorities to raise matters of particular concern; some did and I report on these at paragraphs 87 – 89 below. I report at paragraphs 49 to 85 on the matters which the template did cover.

45. In past years every local authority responsible for education has met the requirement to submit a report to me and most have done so by the deadline of 30 June specified in the Code. This year, 107 local authorities out of the total of 150 submitted their reports by 30 June. By the time of completing this report, this number had risen to 140 but ten local authorities had still not submitted their reports despite numerous reminders. This is unfortunate but in the context of the continuing pandemic understandable and I decided not to continue to ask for the outstanding reports. This section of my report is accordingly based on the reports of 140 authorities and I am very grateful to those authorities.

46. I should also draw attention here to the fact that shortly before the deadline for submission of annual reports, the DfE launched a consultation on a new School Admissions Code. The accompanying information emphasised that:

> "The revised code seeks to clarify and improve the school admissions process where children are admitted to school in-year, so outside of the normal admissions round. The revised code will also provide additional information and details that will support admission authorities in discharging their duties effectively.
>
> These changes are primarily intended to support the most vulnerable children. We are not seeking views on wider changes to the admissions system and other elements of the code at this stage."

47. One further proposed change relevant to normal admissions rounds and to this report concerned the priority to be given to children who are adopted having been in state care outside England. These children had not previously fallen within the definition of previously looked after children set out in the Code and so had not benefited from the same high level of priority for places afforded to children looked after in England before being adopted (or made subject to special guardianship or child arrangements order).

48. As in past years, where local authorities expressed concerns about school admissions, these related most often to in-year admissions rather than to admissions at the normal point of entry. Moreover, again as highlighted in previous reports, those concerns related particularly to the admission in year of vulnerable children. Reports sent to me by the end of June were of course written too early to reflect the consultation. Some later reports did refer to it. In any case, I am certain that should the proposals in

the consultation document come to be adopted in a new Code they will help to address the concerns reported to me by local authorities.

Admission arrangements in the normal admissions rounds

49. Once again, the majority of local authorities have reported that co-ordination of admissions at the normal points of entry has worked well, or very well. As previously, London Boroughs were keen to report that the Pan-London co-ordination process had been particularly effective.

Table 5: Summary of how well co-ordination worked for admissions at the normal point of entry in 2019

	Not well	A large number of small problems or a major problem	Well with a few small problems	Very well
Reception	0	1	35	103
Year 7	0	2	36	101
Other relevant years of entry	2	0	19	81

50. These figures show a continuation of the trend noted in recent years of an increasing proportion of local authorities which have reported that co-ordination either went very well, or that there were only a few small problems. The table below shows how the proportion of responses in all categories has changed since that reported for the 2019 admission round.

Table 6: Percentage of local authorities reporting how well co-ordination worked in each category in 2020 (2019 figures in parenthesis)

	Not well	A large number of small problems or a major problem	Well with a few small problems	Very well
Reception	0 (0)	0.7 (2.0)	25 (30)	74 (68)
Year 7	0 (0)	1.4 (4.0)	26 (40)	72 (56)
Other relevant years of entry	2 (2)	0 (0)	19 (20)	79(77)

51. Some local authorities gave their background to the continuing improvement of co-ordination, with comments such as

> "[LA]…invests considerable effort each and every year to ensure that the co-ordination operates correctly and that offers are made with a high level of accuracy. County-wide training sessions, detailed multi-stage guidance and a broad suite of validation procedures ensures that both the secondary and reception rounds were completed with minimal problems."

> "Systems have been developed to ensure that the vast majority of the process is automated to ensure that the burden on schools who operate as their own admission authority, is as minimal as possible given their responsibilities in regard to this area."

52. A significant number of responses referred to the fact that it had been possible for the local authority to deliver co-ordination effectively in spite of the need for admissions teams to work remotely because of the Covid-19 pandemic. Although some local authorities reported that there had been difficulties created by the crisis, particularly where there were existing problems with IT systems, none said that they were not able to respond successfully. References were also made to the positive engagement of schools in this process, in the very difficult circumstances for all concerned. One said:

> "As a result of schools and the local authority having to be creative and adapt to the environment created by Covid-19, we have found new and improved ways of working which will be adopted and therefore continue in future years."

53. Reference was made by some to the importance of having good working relationships with the increasing number of schools for which the local authority is not the admission authority. Although this was reported to be the case for many, with consequent benefits to the effectiveness of the co-ordination process, this was not universal. Although this year's return did not ask local authorities to comment specifically on the effectiveness of the ranking of applications by admission authorities other than the local authority, a large number nevertheless took the opportunity to do so. As in previous years, there were problems which resulted from late or inaccurate returns from schools, as expressed in the following:

> "Each year there tends to be a small number of primary and secondary schools that don't submit their ranking list within the agreed date. This places an unnecessary burden on officers having to chase own admission authority schools for lists……In some cases, there were also small inaccuracies in ranking this year, but these were quickly resolved with intervention from the LA following our compliance checks."

54. A number of local authorities pointed to the benefit that resulted from carrying out ranking themselves, either as traded service, or simply to avoid problems. One put it like this:

"[LA]…has found that rankings submitted by own admission authority schools do need to be checked each year. It is not a local authority responsibility, however, investing time in checking rankings before the allocations are run has saved a significant amount of time further down the line if errors are found after allocation or after National Offer Day."

55. A very small number of local authorities reported that schools had made offers of places directly to parents outside the co-ordinated process, sometimes without reference to their own oversubscription criteria and sometimes without informing the child's home local authority. In at least one case, the schools concerned had to withdraw the offers of places which they had inappropriately made to children.

56. Many local authorities also commented on the transfer of information between local authorities. This showed a mixed picture. There was an approximate balance between those saying that the process had gone smoothly and on time, and those saying that there had been problems in obtaining data on time from, usually, one other neighbouring local authority. Some referred to problems of this sort having persisted from previous years. Two local authorities suggested that there should be a mandatory deadline by which local authorities would be required to share admissions data. Two others mentioned problems that arise when there is insufficient coordination with the school admissions process and the issuing of Education, Health and Care Plans (EHCP), whether within the same local authority or across local authority boundaries. One outlined steps that have been taken to minimise the need for above-PAN admissions as a result of EHCPs being issued after National Offer Day.

57. It has again been encouraging to read the views of local authorities that the needs of **looked after and previously looked after children** are either well, or very well, served at the normal point of admission. Figures for the 2020 admission round, together with those reported last year for 2019 in parenthesis, are shown in Table 7.

Table 7: Local authorities' views on how well served looked after and previously looked after children are at the normal point of admission (2019 figures in parenthesis).

	Not at all	Not well	Well	Very well	Not applicable
Looked after children in home LA	0(0)	0(0)	10 (10)	129 (140)	0(0)
Looked after children in another LA	0(0)	1(1)	33 (35)	103 (112)	2(3)
Looked after children from another LA	0(0)	0(0)	15 (19)	123 (131)	1(2)
Previously looked after children	0(0)	0(0)	16 (20)	122 (136)	1(3)

58. The number of local authorities who have reported this year is somewhat reduced from last year, and so the raw figures in Table 8 are not easy to compare. In both years, there was almost complete unanimity that the interests of this group were either well served or very well served, but there have been changes in the balance between the two categories.

Table 8: Percentages of local authorities saying looked after and previously looked after children are either well served, or very well served at the normal point of admission

	2019		**2020**	
	Well	**Very well**	**Well**	**Very well**
Looked after children in home LA	6.5	93.4	7.2	92.8
Looked after children in another LA	23.6	73.7	23.7	74.1
Looked after children from another LA	12.5	86.1	10.8	88.5
Previously looked after children	13.1	84.9	11.5	87.8

59. The table shows that, while for the first two groups of looked after children there has been little change in perceptions, for looked after children from elsewhere going to school in the reporting local authority and for previously looked after children generally, there is a higher proportion of local authorities this year who are of the view that the children concerned have been very well served. That is, the overall view is that needs of these two groups have been better met in the most recent admission round than previously.

60. Statutory Guidance issued in 2018 (“Promoting the Education of Looked After and Previously Looked After Children”) emphasises the importance of the role of the Virtual School Head in promoting the education of these children and makes specific reference to school admissions. This year, many local authorities commented on the key role which their Virtual School Head plays in this process while others reported the appointment or designation of officers whose role is to facilitate school admissions for looked after

children, including those looked after by other local authorities. Typical comments included:

> "Last year we reported the appointment of a new Virtual School Head and since this appointment processes around the admission to school of looked after and previously looked after children have been strengthened." and

> "Young people in the care of other local authorities being accommodated in [LA] are supported by the [LA] Virtual School in conjunction with [LA] Admissions to ensure that the most appropriate education is identified."

61. Many local authorities told me that all the schools in their area have admission arrangements which comply with the requirement of the Code that this group have the highest priority in oversubscription criteria, and that schools were co-operative and welcoming, often admitting those whose applications had been made after the closing date for applications. Several were keen to report that all looked after and previously looked after children for whom they were responsible were admitted to their first preference schools.

62. A small number, however, made reference to the admission arrangements of some schools with a religious character. The Code makes it clear that these schools are permitted to give priority to looked after and previously looked after children who are not of the faith for which the school is designated after all those who are of the faith have been admitted. Where these schools are oversubscribed with children of their own faith this can mean that looked after and previously looked after children will not secure places there.

63. The data in table 8 shows that arrangements for the admission of looked after children across local authority boundaries work effectively. However, a number of local authorities complained to me that the variety of practice in the different authorities with which they need to communicate concerning the admission of their own children to schools caused them difficulty, either because some were thought inefficient in their processes, or simply because of the wide range of systems which are in place. One put it like this

> "With 162 out of county LAC placements the system can seem somewhat fragmented in order to support and manage all these young people due to the differences across multiple LAs. There are inconsistent local authority systems for admissions leading to long drawn-out processes for Virtual School Heads to secure placements."

64. A small number of others expressed their concern about the practices of other local authorities in placing looked after children in their areas. One seaside local authority said

> "The relocation of children in KS4 who require carefully planned and specific additional support is a concern. Other LAs often relocate children at short notice

with no prior planning and specifically to access alternative provision. This is often considered unnecessary, as similar provision will be available nearer to home. Often cost seems to be a factor in relocating children at challenging times in their lives and education."

65. I reported last year on problems which were caused as a result of the difficulty which sometimes attends the establishment of the status of previously looked after children. Several local authorities have told me that this has remained an issue for admissions in 2020. Some local authorities were critical of other local authorities which did not themselves verify the status of both looked after and previously looked after children before seeking a school place for them, as illustrated by

> "It is imperative that home LAs verify LAC and previous LAC status of home applicants before application data is shared inter-authority to ensure the correct processing of such applications. There have been occasional instances when status has not been verified by other LAs before preference requests are shared which delays processing and, on rare occasions, results in incorrect allocation."

66. One local authority called for there to be a duty placed on local authorities to share information such as that for children adopted "with destination LAs", and another referred to information sharing being made problematic "due to GDPR". I made it clear in my report last year that GDPR (General Data Protection Regulation) does not create such barriers, and that there are already clear expectations on corporate parents to act in the best interests of children for whom they are responsible, and so they should share information about them in a timely fashion where this is necessary in order to fulfil this expectation.

67. Some local authorities referred to problems which can result when a school place is sought for a looked after or previously looked after child after the allocation of places in the normal round has taken place. Although I report on in-year admissions separately, it is worth mentioning here the request made by one local authority that where this happens at Year R, such children be included in those eligible to be admitted to a school as permitted exceptions to the infant class size limit. In fact, by regulation 2(4), regulation 5 and schedule 2 to the School Admissions (Infant Class Sizes) (England) Regulations 2012 , looked after and previously looked after children who are "offered a place at the school after the time when the admission authority had determined, in accordance with the school's admission arrangements, which children in that age group were to be admitted to the school" are excepted children for the purposes of the regulations if their admission would result in the school admitting more children than it had planned to admit. To put it another way, the law already delivers what the local authority is seeking.

Children adopted having been in care outside England

68. I asked again this year about arrangements giving priority to adopted children who had previously been in state care outside England. As noted above, the DfE's consultation on a new Code included a proposal that these children should in future be

included along with children looked after or previously looked after in England in having a mandatory very high level of priority. Local authorities will in responding to that consultation have set out their views on this important matter.

Special Needs

69. This year's template did not ask local authorities to rate the extent to which admissions at the normal point of entry served children with special educational needs or disabilities (SEND), but they were offered the opportunity to provide any comments if they wished, and very nearly all local authorities chose to do so. In line with the largely positive views expressed in previous years, very many simply reported that their systems were working well, and that this group of children's needs was being met as a result. However, this was by no means universal, with a number of local authorities reporting that some schools were resistant to the admission of SEND children, even in some cases where the child had an EHCP which named the school. Two local authorities referred to the use of their power to direct the admission of a child with an EHCP to the named school. I was surprised and concerned to learn that this had been considered or found necessary and remind admission authorities and local authorities that the duty to admit such children is a statutory duty imposed by the Children and Families Act 2014. The Code also makes clear that these children must be admitted.

70. One frequent comment concerning the admission of children with an EHCP naming a school was that there were also difficulties for children when the plan was finalised after National Offer Day, some citing difficulties with other teams working in their own local authority. A number suggested that even the statutory deadline of 15 February for revised plans to be finalised provides too little time for efficient coordination before the secondary school national offer date of 1 March, and some asked that this deadline be reviewed. However, it was clear from the responses of a number of other local authorities that they were able to process these admissions when the deadline of 15 February was adhered to.

71. Local authorities which commented on the admission of children with special needs who did not have an EHCP differed significantly in their approach, with many saying that they expected schools for which they were the admission authority to admit these children under an oversubscription criterion for those with medical or social needs, and that they encouraged admission authorities in their area to adopt such a criterion and follow suit. Others had decided against such an approach, taking the view that schools were resourced to meet the needs of all pupils and that they should not have regard in their admission arrangements to any special needs of children who did not have an EHCP. Their view was that the children's position was adequately protected by the provision in paragraph 1.9 h) of the Code which prohibits admission authorities from discriminating "against….disabled children, those with special educational needs….." in their admission arrangements.

72. In spite of the generally up-beat picture, some local authorities did report that they

were facing a large increase in the number of children with special educational needs. Some also noted a desire on the part of parents for places in specialist provision because parents lacked confidence that mainstream schools would meet their children's needs. This in turn was having the effect of putting extreme pressure on specialist places in their area.

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

73. As noted above, some local authorities did refer to the consultation on the proposed new Code and in doing so welcomed the more detailed provisions on in-year admissions and the Fair Access process.

Co-ordination of in-year admissions

74. I did not ask local authorities to tell me about the numbers of children admitted in-year but I did give them the opportunity to make comments on the co-ordination of in-year admissions in their area.

75. A total of 118 local authorities provided information about co-ordination. They included local authorities who co-ordinate in year admissions for all the schools in year area, local authorities who co-ordinate for some schools and those who do not co-ordinate for any schools. As in previous years some local authorities asked for co-ordination to be made a statutory duty and set out the arguments for doing so: the benefits for parents having one point of contact, better access to data when working with neighbouring local authorities, improving safeguarding, supporting better monitoring of children missing from education and ensuring consistency in the admissions process. One local authority reported that it consulted schools about introducing co-ordination, but schools preferred to retain the responsibility for the admissions process. Another local authority said that the advantage of not having co-ordination in place was the majority of children were admitted without delay and with minimal bureaucracy.

76. There were a number of specific concerns raised in the reports about in-year admissions. Some local authorities were concerned about children who were new to the area, and that the local authority was not informed by schools (or indeed by parents) that applications for school places had been made. This meant that the local authority concerned might not know that children were living in their area, seeking school places and possibly missing education for a lengthy time. It was reported to me that in some instances admission authorities told parents that there were no places available; as no application had been made, parents were not told about the right of appeal.

77. The proposed changes to the Code do not include the re-introduction of mandatory co-ordination by local authorities of all in-year admissions. However, they do make a number of proposals which should address the concerns raised. In particular, the proposals to set mandatory timescales for processing in-year applications, for requiring better and more timely information to be produced and for sharing of information and strengthening provisions governing informing parents of their rights – including the right

to an appeal – should mean the system will work better for parents.

Looked after and previously looked after children

78. Table 9 sets out a summary of the responses to my questions about how well the admissions system meets the needs of looked after and previously looked after children when they need a place in year. Many local authorities reported that improved information sharing between the Virtual School and the admissions team had led to more informed decision making and enabled the local authority to challenge decisions where appropriate when applications for places had been refused. However, there were concerns that some admission authorities refused applications on the grounds that the year group was full, or that the school was unwilling to engage in discussions about the admission of a looked after or previously looked after child with the result that decisions about the admission of the child were delayed. I was told that some local authorities faced particular challenges securing admissions for children in Year 11. In some cases, local authorities told me that they have had to propose a direction as one route to resolving delays in confirming a school place. Again, the proposed changes to the Code should do much to support the timely admission of children. Given that these are some of the most vulnerable children I am concerned that they should not miss any education and that their admission should be secured quickly.

Table 9: Summary of responses in relation to specific groups of children and how well served they are by in-year admissions (2019 figures in parenthesis)

	Not at all	**Not well**	**Well**	**Very well**	**Not applicable**
Looked after children	0(0)	0(2)	37(49)	102(100)	1(1)
Children looked after in other LA areas	1(0)	17(26)	78(80)	41(43)	3(3)
Looked after children from other LA areas but educated in your area	0(0)	3(4)	56(60)	80(86)	1(2)
Previously looked after children	0(0)	3(1)	49(62)	87(88)	1(1)

Note: the total number of local authorities submitting a report in 2019 was 152; in 2020 it was 140.

Children with special educational needs and/or disabilities

79. Table 10 provides a summary of the responses to my questions about how well the in-year admissions system deals with children with special educational needs and/or disabilities, both with EHCPs and those who do not have a plan. Most local authorities reported positively about the admission of children with EHCPs telling me for example that

> "Systems in place for children with EHCP align with requirements in legislation and Code of Practice. Every effort to ensure smooth transition supported by systems in place to regularly monitor children either through annual review and/or discussion with stakeholders."

80. Again in line with responses in past years, greater and more concerns were expressed about how well met were the needs of children with SEND but without EHCPs. A number of local authorities told me that schools were reluctant to admit such children because of fears that to do so would put too much pressure on their resources and consequent ability to meet the needs of all children. Again, I would hope and expect that the provisions in the proposed Code would help to ensure that such children are admitted promptly.

Table10: Summary of responses in relation to children with special educational needs and/or disabilities and how well served they are by in-year admissions (2019 figures in parenthesis)

	Not at all	Not well	Well	Very well	Not applicable	Don't know
Children with an EHCP	0(0)	5(6)	63(57)	70(89)	2(0)	
Children who do not have an EHCP	1(0)	8(16)	86(84)	42(48)		3(4)

Fair Access Protocol

81. Every local authority **must** have a FAP, agreed with the majority of schools, in place to ensure that, outside of the normal admissions round, unplaced children, especially the most vulnerable, are found and offered a place at a suitable school quickly. Of the four local authorities which reported that their FAP was not agreed with primary schools, two managed cases through groups which were established to manage complex admissions, one was reviewing the FAP, and another said that they had been able to place children without a FAP but had decided to develop one with a working group set up in the summer of 2020 but delayed because of school closures.

82. Table 11 shows the number of admissions reported by local authorities made using the FAP in the financial year of this report. The numbers vary widely between local authorities even taking account of the size of each authority. A number of authorities wished to emphasise that the FAP generally worked well and demonstrated good collaboration between schools and the local authority to place children as quickly as possible. Several local authorities had recently reviewed or were in the process of reviewing their FAPs in order to secure further improvements.

83. Whilst this paints a picture overall of FAPs working well, this is not universally the case. Local authorities again report that some schools continue to resist or delay admitting children once a panel has decided that the school is the most appropriate placement. There continues to be particular reluctance I am told when it comes to admitting children – especially those with challenging behaviour - to Years 10 and 11. A number of local authorities called – as they have done in previous years – for a formal definition of challenging behaviour to be set out in the Code. Again, the Department's document accompanying the draft proposed Code states that the intention is to set out "what is meant by challenging behaviour in that context [that is the FAP]". I am sure that this will be welcomed.

84. A key aim of FAPs is – in the words of the Code – to "ensure that no school – including those with available spaces - is asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour". I am in no doubt that the effective use of FAPs since their introduction has done much to achieve this. However, there are constraints on their use. From adjudicator casework, we are conscious that in some rural parts of the country, the number of schools means that there are few options available. One local authority described well the challenge in balancing the needs of individual children with the need to ensure that no school did have to accept a disproportionate number of children with challenging behaviour:

> "…the sheer volume of disadvantaged pupils applying for school places in the district means decisions are sometimes weighted more towards ensuring allocations are shared equitably between schools and the needs of the school, rather than the needs of the individual."

Table 11: The number of children admitted to schools under the Fair Access Protocol between 1 April 2019 and 31 March 2020 (2018-19 figures in parenthesis)

Type of school	Primary aged children	Secondary aged children
Community and voluntary controlled	3,822(4,181)	1,450(1,993)
Foundation, voluntary aided and academies	3,821(4,029)	10,218(10,335)
Total	7,643(8,210)	11,668(12,268)

Table 12: Summary of responses on how well hard to place children are served by the Fair Access Protocol

Not at all	Not well	Well	Very well	Not applicable
0	5	60	71	1

In year admissions and PANs

85. I have written in past reports about the fact that the PAN applies only in the normal year of entry and that whether or not a child can be admitted in year falls to be considered against the tests of prejudice set out in the legislation and in the Code. Against, that background, I note with concern that some local authorities have told me that some admission authorities in their area "cap" the PAN immediately after the beginning of the school year. This is not permitted; the PAN applies for the whole of each normal year of entry and admission cannot be refused below that number except in very limited circumstances. One local authority told me it was "at risk of having insufficient school places for in-year admissions" if large numbers of admission authorities 'cap' the PAN of year groups after the September intake.

Other matters

86. I was pleased to receive 49 responses from local authorities about other matters they wished to raise with me. Once again, a number of local authorities raised concerns about the admission of summer born children to school. I do not intend to set out those issues here as they have been covered by past reports but simply to reflect some of the comments I received which were summed up well in the following:

> "Apart from the logistical difficulty with the application process, the current guidance does not serve well the interest of parents, pupils, schools or admission authorities. The automatic entitlement for deferred entry of Summer-born children with no guaranteed entitlement to an out-of-year place continues to cause confusion amongst parents and some schools."

87. The consultation document accompanying the proposed new Code had addressed the issue of summer born children and explained that while the Government remained committed to amending the Code in relation to this matter it was unable to do so until it was possible to make necessary changes to primary legislation.

88. Other issues raised with me included the possibility of a rise in the number of children educated at home, including in response to the Covid-19 pandemic, and the need for a register to monitor the group and support for local authorities when applications are made to return to mainstream education.

Appendix 1 – The role of the OSA

89. Adjudicators exist by virtue of section 25 of the School Standards and Framework Act 1998. They have a remit across the whole of England. In relation to all state-funded mainstream schools, other than 16–19 schools, adjudicators rule on objections to and referrals about determined school admission arrangements. In relation to maintained schools, adjudicators: decide on requests to vary determined admission arrangements; determine referrals from admission authorities against the intention of the local authority to direct the admission of a particular child; decide some school organisation proposals; and resolve disputes on the transfer and disposal of non-playing field land and assets. The adjudicator can be asked by the Secretary of State for Education to give advice on matters relating to the admission of children to schools.

90. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. They look afresh at cases referred to them and consider each case on its merits in the light of legislation, statutory guidance and the Code. They investigate, evaluate the evidence provided and determine cases taking account of the reasons for disagreement at local level and the views of interested parties. Adjudicators may hold meetings in the course of their investigations if they consider it would be helpful and could expedite the resolution of a case.

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

92. Over the period covered by this report there were ten adjudicators, including the Chief Adjudicator. Adjudicators are supported by a team of five full-time equivalent administrative staff who are seconded from the DfE for this purpose. It is right that I pay tribute here on behalf of all the adjudicators to the team for the way they have coped with the changes to their working practices brought about by the pandemic and, above all, for their continued fortitude and good humour in dealing with a case load which rose from a typical number of around 250 to some 1,350.

93. The OSA's costs in the financial year April 2019 to March 2020 fell compared with the previous financial year (itself a fall from the year before that). The most recent adjudicator appointments having been made in Spring 2017 and no adjudicators having stopped serving during the period means that we enjoy a stable and experienced cadre. The increase in the number of cases has not been reflected in increased costs in this report. This is in large part because while I report on cases in academic years – and up

to the end of the calendar year this year, the costs shown below relate to the financial year ending 31 March 2020 and so do not take account of the period in which we saw the large increase in case numbers. We have also continued to develop more efficient ways of working. For example, adjudicator meetings have been held virtually and I would expect this to yield savings in the 2020-2021 financial year.

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

95. At the completion of each case, the OSA seeks feedback from all involved on how the matter was handled. This year 478 forms were sent out and 66 (which is 14 per cent) returned. The great majority of those who responded were satisfied with the service provided by the OSA staff and by the adjudicator assigned to the case and felt that they understood our processes and were kept well informed of the progress of their case. We will continue to seek to improve our processes so that we can better serve objectors, admission authorities and others. In particular, we are considering how we might incorporate our increased use of virtual meetings adopted as a result of Covid-19 into our routine ways of working as we have found that in some cases this may suit parties to cases and save them – and us – time and money.

96. We received four complaints about the handling of cases over the period covered by this report. Three were from one individual who had made objections to the arrangements of a number of different schools and the fourth from a different objector. I did not uphold any of these complaints.

97. We received 21 requests for information that cited the Freedom of Information (FOI) Act in the period 1 September 2019 – 31 December 2020. I note that in some instances those seeking information make requests citing the FOI Act when we would in fact be willing and able to release the information sought in response to a simple request.

Appendix 2 - OSA expenditure 2019-20 and 2018-19[6]

OSA Expenditure financial years 2019-20 and 2018-19

Category of Expenditure	2019-20 £000	2018-19 £000
Adjudicators' fees	353	370
Adjudicators' expenses	12	15
Adjudicator training/meetings	48	45
Office staff salaries	163	163
Office staff expenses	4	4
Legal fees	6	14
Administration/consumables	1	1
Total	**587**	**612**

[6] Information relates to financial years 2018-19 and 2019-20. The report covers the academic year 2019/20 together with the period 1 September 202- 31 December 2020.

Appendix 3 – Table Index

Office of
the Schools
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