



Office of
the Schools
Adjudicator

Office of the Schools Adjudicator Annual Report

1 January 2023 to 31 December 2023

March 2024

Contents

Introduction and executive summary	3
Part 1 - Review of OSA work in the period 1 January 2023 to 31 December 2023	4
Objections to and referrals of admission arrangements	7
Variations to determined admission arrangements of maintained schools	12
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	13
Discontinuance and establishment of and prescribed alterations to maintained schools	17
Land matters for maintained schools	18
Part 2 - Summary of local authority reports September 2022/August 2023	19
Admissions in the normal round	20
Admission other than at normal points of entry (In-year admissions)	31
Other matters raised by local authorities	39
Appendix 1 - The role of the OSA	40
Appendix 2 - OSA expenditure	43
Appendix 3 - Table Index	44

Introduction and executive summary

1. This report to the Secretary of State for Education (the Secretary of State) covers the work of the Office of the Schools Adjudicator (OSA) during the calendar year 2023 and the local authority reports made to me in accordance with the School Standards and Framework Act 1998 relating to the academic year September 2022 to August 2023. As always, I hope that the findings drawn from adjudicator casework and from local authority reports will be of use to the Secretary of State, Ministers and officials, local authorities, faith bodies, academy trusts and school governing boards.

2. Part 1 of the report deals with adjudicator casework. Part 2 of the report summarises the local authority reports. Where it seemed most helpful, I have drawn together under the headings in Part 1 observations derived from casework and local authority reports.

3. In terms of OSA casework, the number of new cases submitted to the OSA was 292. This was fewer than the 318 submitted in 2022, but within the range seen in recent years. As I explain in more detail below, the trend of increasing numbers of requests for advice on directions to admit named pupils to academies continued, the number of proposed variations to admission arrangements remained roughly the same and there were somewhat fewer objections to admission arrangements. As in recent years there were very few statutory proposals referred to us and this year no land transfer cases.

Shan Scott

Chief Adjudicator

Office of the Schools Adjudicator

March 2024

Bishopsgate House

Feethams

Darlington

DL1 5QE

Email: osa.team@schoolsadjudicator.gov.uk

Website: www.gov.uk/government/organisations/office-of-the-schools-adjudicator

Part 1 - Review of OSA work in the period 1 January 2023 to 31 December 2023

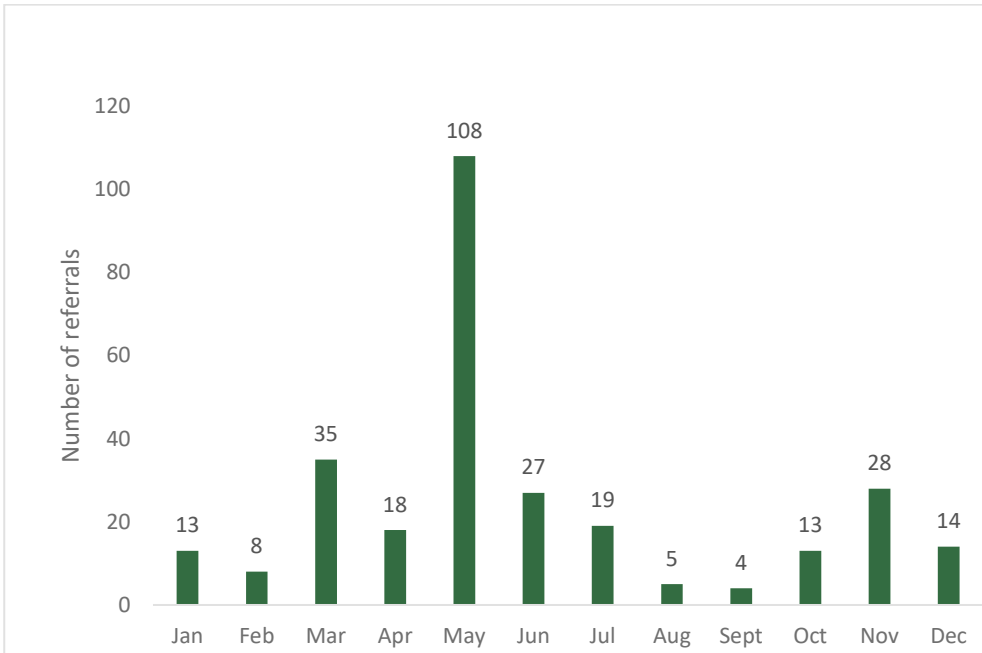
4. We began 2023 bringing forward from 2022 a total of 21 cases comprising six objections to and referrals of admissions cases, 13 requests for variations and two for advice on the admission of named pupils to academies. While there is a deadline for objections to admissions arrangements, which means 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. It is inevitable that some cases will be referred to us in one reporting year but completed the next.

5. I have reported in past years on a trend of increasing numbers of “direction and direction advice”¹ cases. Whereas in the years up to 2019 numbers were well under 20 annually, in each of 2020, 2021 and 2022 they were between 30 and 35. In 2023 the number of new such cases rose to 59. By contrast the number of objections to and referrals of admission arrangements fell from 205 in 2022 to 138 new cases in 2023. The number of proposed variations also rose with 92 new referrals compared with 78 in 2022.

6. As I reported last year, the increased numbers of direction and direction advice cases combined with the number of requests for approval of proposed variations to determined arrangements had made the work of the OSA somewhat less seasonal than in previous years. As figure 1 shows, while May remained the month with by far the highest number of cases referred, over 60 percent of cases were referred in other months. Nearly half of those referred later in the year were requests from the Secretary of State for advice on whether an academy should be directed to admit a named child.

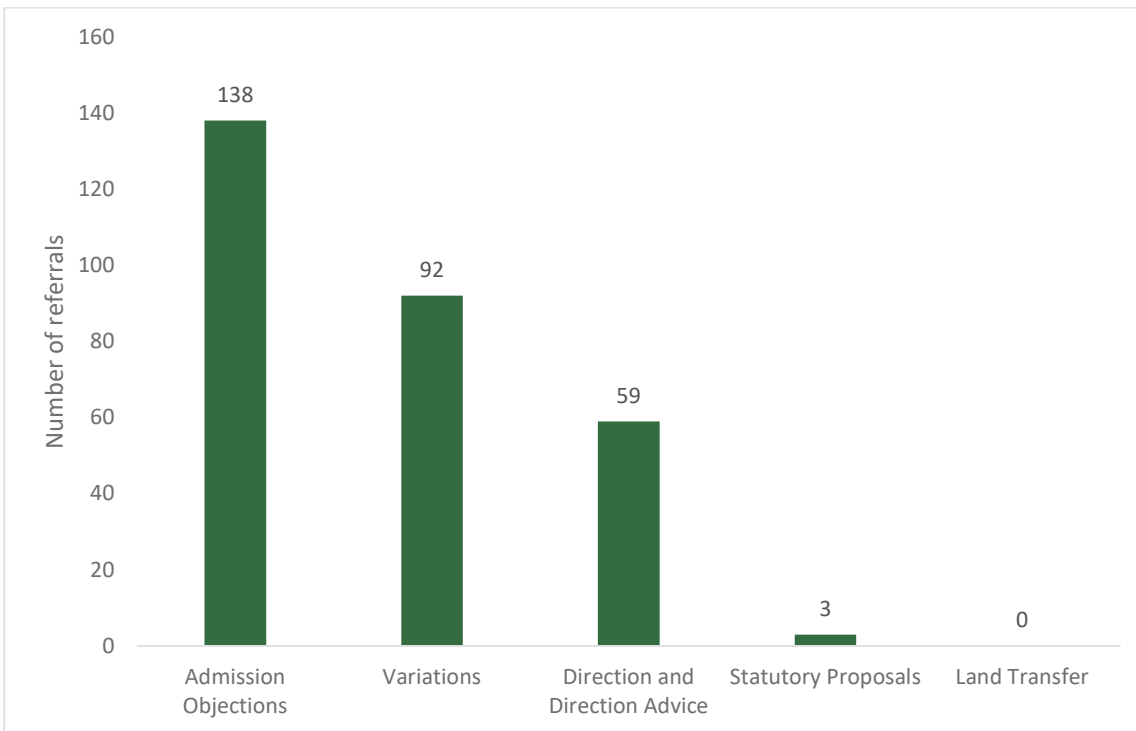
¹ Direction cases means referrals by maintained schools of a notification by a local authority of its intention to direct the school to admit a named pupil. Direction advice cases means requests by the Secretary of State for advice on whether she should direct an academy to admit a named pupil.

Figure 1: Referrals of cases by month in 2023



7. The number of cases of each type referred to the OSA during the year is shown in figure 2.

Figure 2: New Referrals by type 1 January 2023 to 31 December 2023



8. Towards the end of the year, we began a small project working with a number of local authorities to understand better the mapping technology they employ as we seek to improve our own capacity in this area. Our aim is to ensure that our work is informed by

the best possible understanding of the implications and effect of the admission arrangements we are called to investigate or, to put it another way, how those admission arrangements work in practice and whether they are fair in their effects. We are grateful to the local authorities who have agreed to work with us. Particular thanks go to East Sussex, Hertfordshire, Leeds, Merton, North Northamptonshire and Surrey local authorities for their work with us so far.

9. I have attended the Department for Education (DfE) convened admissions group. Colleagues and I have also attended meetings and held discussions with other stakeholders.

Objections to and referrals of admission arrangements

Table 1: Admissions cases by year and outcome

	1 January 2023 – 31 December 2023	1 January 2022 – 31 December 2022
Number of cases considered	144	214
Number of new cases	138	205
Cases carried forward from previous year	6	9
Number of individual admission authorities within new cases	72	50
Cases finalised	134	208
Objections fully upheld/found not to conform with requirements	33	131
Objections partially upheld	34	40
Objections not upheld/found to conform	57	22
Cases withdrawn	3	13
Cases out of jurisdiction	7	2
Cases carried forward into following year	10	6

10. We received 114 new cases by the 15 May statutory deadline for objections to admission arrangements and a further 24 referrals submitted after that deadline giving a total of 138 cases. Given that in 2022 we had received 205 such cases, this might at first glance suggest a significant reduction in the number of objections and referrals. However, in 2022 a wholly exceptional 94 objections were made to the arrangements of two schools (a boys school and girls school) in the same academy trust and with essentially the same arrangements. While in 2023, there was again a large number of objections to the arrangements of a different pair of boys and girls schools (in a different part of the country) the total number of objections to these two schools was much lower at 32. Overall, there was a reduction but not as great in terms of the numbers of admission authorities objected to as might have first appeared.

11. As in past years, new cases related to all categories of schools with 11 to the admission arrangements for community and voluntary controlled schools in eight local

authorities, seven to seven voluntary aided schools, two to two foundation schools and 118 to 55 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 70 per cent of all objections. Local authorities, governing boards of schools and two Members of Parliament were among others who made objections. Table 1 above gives the outcome for each case completed. In 12 of the cases where a conclusion was reached by 31 December 2023, the adjudicator found no fault in the arrangements – either in the matter complained of or in his or her own consideration of the arrangements. In 13 cases the objection was upheld/arrangements found not to comply and in 34 it was partially upheld. In 45 of the 57 cases where the objection was not upheld or the matter originally complained of was found to comply, other matters were found not to comply with the requirements relating to admissions. Three cases were withdrawn and seven were found to be outside our jurisdiction.

12. I am very glad to be able to report that we were able to complete our consideration of all objections to secondary school admission arrangements made by the 15 May deadline to secondary school admission arrangements before the 31 October deadline for applications for secondary school places for September 2024. One secondary case (relating to 2025 arrangements and referred in December 2023) was brought forward into 2024. For primary schools, we completed 32 cases by the end of the year, so before the 15 January 2024 deadline for applications for primary school places. We carried forward nine into 2024. Of the primary and secondary cases carried forward into 2024, seven were referred after 15 May 2023.

13. As in previous years, objections covered a wide range of matters and, unsurprisingly, many of those matters had arisen in earlier years and were covered in past reports. Those reports remain available at [OSA annual report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114222/OSA-annual-report-2023.pdf). For the past two years I have included in my annual report a table giving details of where further information about particular matters can be found in earlier reports. I again include an updated version of that table here.

Table 2: Matters covered in past reports

Matter	Annual Report (paragraph numbers in brackets)
Admission outside normal age group (including but not restricted to summer born children below compulsory school age)	2016/2017 (23) 2023 (17)
Banding	2022 (16)
Catchment areas (including those created	2015/2016 (36)

Matter	Annual Report (paragraph numbers in brackets)
by use of “nearest school” criterion)	2016/2017 (16-18) 2018/2019 (18-19) 2019/December 2020 (13) 2023 (18)
Complexity of arrangements	2015/2016 (45) 2016/2017 (20)
Consultation	2015/2016 (24-26, 49) 2016/2017 (13, 36-40) 2017/2018 (20) 2018/2019 (15-16)
Faith based arrangements (including that schools with a religious character do not have to have faith-based arrangements)	2015/2016 (41-44) 2016/2017 (21-22) 2021 (25-27) 2022 (17-20)
Feeder schools	2015/2016 (37-40) 2016/2017 (18) 2023 (15)
Home address	2021 (19-24)
Indirect discrimination on the basis of race	2022 (17-21)
Priority for children who have attended a school’s nursery	2015/2016 (33)
Published admission numbers	2016/2017 (26) 2018/2019 (23) 2021 (13-18) 2022 (15)
Selection (including partial selection) and grammar schools	2016/2017 (19) 2018/2019 (22) 2019/December 2020 (14) 2022 (15)

Matter	Annual Report (paragraph numbers in brackets)
Siblings	2015/2016 (35) 2016/2017 (15)
Sixth form admissions	2018/2019 (21)
Summer born children	2015/2016 (34) 2016/2017 (23) 2018/2019 (97-98)

14. There were some matters raised in objections this year which were either new or had not been covered in recent annual reports. I describe these in a little more detail in the following paragraphs.

15. One local authority with a number of **linked infant and junior schools** was giving the highest priority for places at each junior school to children who had attended the relevant infant school. As a result, looked after and previously looked after children who had not attended the infant school were being denied their entitlement to the highest priority for places at the junior schools. This was a clear breach of regulation 7 of the School Admissions (Admission Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012 and of paragraph 1.7 of the Code.

16. We continue to see cases where the **definitions used of looked after and previously looked after children** are not in accordance with the very clear definitions used in the Code. I find it hard to understand why admission authorities do not simply adopt the wording provided there.

17. I am particularly disappointed to find myself having to note that a number of admission authorities continue to state or imply in their arrangements that **part-time attendance or deferred entry to school for children below school age** is something parents can request or must secure agreement to from schools. Part-time attendance and deferred entry for children below compulsory school age are entitlements. They are not requests to be considered by schools and possibly refused. Paragraph 2.17 of the Code sets this out clearly and simply and makes it clear too that this must be covered in the admission arrangements for schools admitting such children. It may be that there is a lack of understanding of the difference between such part-time and deferred entry and the separate issue of **delayed admission of summer born children** whose parents wish them to join Reception at the time their age cohort is moving into Year 1. That is not a right but may be requested by parents and decisions then made in the best interests of the child. There is guidance on this at [Guidance on handling admission requests for summer born children - GOV.UK \(www.gov.uk\)](http://www.gov.uk/guidance/guidance-on-handling-admission-requests-for-summer-born-children)

18. I have covered **catchment areas** in past reports but wish to draw attention this year to a particular matter. We have seen admission arrangements which refer to

“interactive catchment maps”. These are typically located on local authority websites and allow parents and others to establish which school catchment area or areas a particular address falls into. They are very useful tools and I am sure of great use to parents who are considering which schools to express a preference for. However, they are not on their own enough to satisfy the requirement in paragraph 1.14 of the Code that catchment areas be “clearly defined.” Being able to establish that an address is within the catchment area of a school does not define that catchment area of that school anymore than does establishing that an address is within West Sussex define the county boundaries of West Sussex. Where a catchment area is part of a school’s admission arrangements, that catchment area must be defined clearly – by means of a map which shows its boundaries clearly or by some other means such as a definitive list of road names or post codes.

19. Last year I noted that an application for judicial review of adjudicator determinations relating to the admission arrangements of Langley Park School for Boys and Langley Park School for Girls, both academies in the London Borough of Bromley had been made. At the time of completing the 2022 report, judgment had not been given. Judgment was given on 15 May 2023 and can be found at [Sharp, R \(On the Application Of\) v Office of the Schools Adjudicator \[2023\] EWHC 1242 \(Admin\) \(25 May 2023\) \(bailii.org\)](#). I am very glad to be able to report that the judgment found the adjudicator’s determination to be lawful and correct in all respects and the application was dismissed with the result that the adjudicator’s determination stands. That determination can be found on our website at [Langley Park School for Boys and Langley Park School for Girls: 15 August 2022 - GOV.UK \(www.gov.uk\)](#)

20. The case concerned what matters an adjudicator may and must take into account in determining whether a school’s admission arrangements are fair. While adjudicator determinations do not create precedents, judgments of the Hight Court do and it is accordingly worth setting out what the Court had to say about fairness in the context of school admissions. The Court noted that:

“[40.]...fairness is not defined [in the statute or in the Code]. That is not a defect in the system: it simply means that the word, and the concept bear their ordinary meaning rather than a meaning delimited by the legislation. No doubt fairness is not easy to define. It is, as Lord Wilson remarked, speaking of procedural fairness, in R(Moseley) v London Borough of Haringey [2014] UKSC 56 at [24] “a protean concept, not susceptible of much generalised enlargement”. It seems to me that an assessment of fairness will have at least the following two features. First, it will respond to claims based on facts and perceptions that have a variety of levels of objective recognition and may sometimes have to take into account considerations that are wholly subjective. Secondly, it will not take into account only the position of those who object to a particular arrangement and claim it is unfair to them but will balance those claims against other claims actual or possible in order to reach a solution that has a measure of equality.”; and

“[55.] In my judgment, in considering fairness, an adjudicator is not restricted to

giving effect to legal rights, but may take into account factors that do not give rise to legal rights.”

21. The admission authorities for the schools had changed their arrangements following the determination and before the Court hearing and so did not have to make any further changes consequent on the judgment.

Variations to determined admission arrangements of maintained schools

22. 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. 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.

Table 3: Variations to admission arrangements

Variation to admission arrangements	1 January 2023 – 31 December 2023	1 January 2022 – 31 December 2022
Total cases dealt with	105	87
Approved	73	62
Approved with modification	2	0
Not Approved	14	8
Out of Jurisdiction	0	0
Withdrawn	6	4
Decisions outstanding	10	13

23. The total number of variations considered in 2023 was 105, of which 92 were referred in 2023 and 13 brought forward from 2022. The 92 referrals made represents an increase on the 78 referrals made in 2022.

24. Following the pattern of recent years, the most common reason for seeking a variation was to reduce the PAN in a primary school, accounting for almost 80 percent of cases completed in 2023. There were two requests to reduce the PANs in secondary schools. A total of 56 proposed reductions in PAN were approved, 12 proposed reductions were not approved and five such requests were withdrawn.

25. I have in past reports emphasised the importance of timing in relation to such proposed variations. Last year I said “I ask admission authorities to be mindful of the timing of requests for variations [for PAN reductions]. Such requests submitted after the

deadline for publication of the composite prospectus and/or when the window for applications is open but before the deadline for expressing preferences will be particularly closely scrutinised by adjudicators. This is because it could be unfair to parents if they express preferences expecting, say, 60 places to be available at a school and that number is then reduced. Requests submitted earlier – so that a reduced PAN can be made known before parents must make applications – or later – so that the actual level of demand can be taken into account – are much to be preferred.” Against this background, I am disappointed that 18 requests for variations were again submitted for primary school PAN reductions between 1 September and the end of December 2023.

26. Variations were also proposed for other reasons. These included changes to school catchment areas consequent on changing patterns of demand and to align better with home to school transport provision in rural areas and changes necessary in consequence of the approval of statutory proposals to make prescribed alterations to schools, such as to add a Year 12 PAN following a change of age range to a school to add a sixth form.

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

27. Under Sections 96, 97, 97A and 97B of the School Standards and Framework Act, the admission authority for a maintained school may, in certain circumstances, be notified by a local authority that it is to be directed to admit a child. The admission authority for that school can in turn refer to the adjudicator the notification and the adjudicator will then make the final decision. We refer to these as direction cases. For academy schools, where 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 Secretary of State, to direct the academy to admit the child and, in such cases, the Secretary of State may seek advice from the adjudicator. We refer to these as direction advice cases. Table 4 shows the total number of such cases (covering both maintained schools and academies) dealt with by the OSA in 2023 and in 2022.

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

	1 January 2023 – 31 December 2023	1 January 2022 – 31 December 2022
Total cases considered	61	36
Maintained schools – decision to:		
• Admit the child	1	1
• Not admit the child	0	1
Advice to Secretary of State to:		
• Admit the child	28	17
• Not admit the child	10	7
Out of Jurisdiction	0	0
Withdrawn	14	8
Decisions outstanding	8	2

28. In relation to maintained schools in 2023, we dealt with six referrals of a local authority’s direction to a maintained school to admit a child. Three of these were withdrawn; in one case the direction was upheld and the school required to admit the child. The final two cases were referred in December 2023 and carried forward into 2024.

29. For academies, the number of cases was, as in recent years, much higher than the number of referrals for maintained schools. This reflects the fact that most direction and direction advice cases concern secondary aged children and most secondary schools are academies. In 2023, we considered 55 requests for advice to the Secretary of State on whether an academy should be required to admit a child². In 28 cases we advised that the school should be directed to admit the child and in ten that it should not. Eleven cases were withdrawn. Six cases, all referred in November or December, were carried forward into 2024.

30. Taking direction advice and direction cases together, the 59 new referrals in 2023 represented the highest ever annual total. Along with this increase in numbers of cases, the number of local authority areas involved rose too from 26 to 40. Of the cases considered in 2023 (that is new cases and the two brought forward from 2022), 31 concerned looked after children and 25 of these were children who were being looked

²Of these, two were brought forward from 2022 and 59 received in 2023.

after by one local authority but living in the area of another local authority – sometimes living very many miles away from the area of the local authority looking after them. There were 28 cases concerning children who were not looked after. Two children’s status had not been established before the cases were withdrawn. We completed 53 cases during the year and carried eight forward into 2024. Table 5 below gives some characteristics of the children involved in these cases.

Table 5: Children subject of Direction/Direction advice cases in 2023³

	Looked After	Not looked after	Not known if looked after ⁴	Total
Primary	3	1		4
Secondary	28	27	2	57
Total	31	28	2	61

31. At paragraph 98 of part 2 of this report, I record the numbers of directions made by local authorities to maintained schools to admit children. It is only a small minority of those cases that become adjudicator casework as that happens only where the school concerned refers the case to us. It is, however, I think worth noting here that the number of local authority directions also rose sharply from 17 in the 2021/2022 year to 134 in the 2022/2023 academic year.

32. I noted at paragraph 28 of last year’s report that we do not publish directions to admit named children to maintained schools or our advice to the Secretary of State on requests for her to direct academies to admit named children and set out the reasons for this. As last year, I have accordingly decided again to say a little more about these cases and our findings in general in this report.

33. All direction and direction advice cases are given the highest priority by OSA staff and adjudicators as they involve children and young people who may be missing education. Against that background, I remain concerned about how long some of these cases take to complete for reasons outside the OSA’s control. We receive cases where the information which is needed - and which it is made plain on our own and on DfE’s forms is needed – is not provided at the outset. Some schools and some local authorities are then not prompt to respond to our enquiries. One local authority in its report to me said:

“Due to the difficulties we experienced this year, it was necessary to request directions for some children. Given the circumstances that a direction is a last

³ This includes cases brought forward from 2022 and those received in 2023 including those carried forward into 2024

⁴ The cases were withdrawn before the child’s status was established

resort and a child is likely to have been missing from education for an already significant amount of time, it is unfortunate this process is lengthy. As an example, a request for a direction was sent to the [DfE] on 16 February 2023, the outcome was received on 11 May.”

I reviewed this particular case. It arrived with the OSA on 21 February and the adjudicator’s advice was sent to the DfE on 28 March – which is 26 working days. We would usually aim to complete our work within 20 working days, so we were not about to meet that target. However, it is clear from the dates that significantly more time than elapsed after our advice had been sent and our part in the process thus ended.

34. Last year I also noted that 14 out of the total number of 33 cases referred in 2022 were referred to the OSA in November that year. The pattern was somewhat different this year; the final quarter (so including November of course) was the busiest and we received 22 cases then compared with 15 in the first quarter, eight in the second and 14 in the third.

35. Finally, in this section I want to address a matter that came to my attention through direction and direction advice casework and through the reports of local authorities. This is the treatment of looked after and previously looked after children when they need a place in-year and whether or not they should be considered under Fair Access Protocols (FAPs) either instead of or prior to seeking a direction to admit. One local authority said:

“For in year admissions, the Fair Access Protocol is used quickly and effectively in concert with other admission authorities to ensure that children in care and those formerly in care can be placed at the most suitable school, even when that school is full in the child’s year group, without recourse to the lengthy and sometimes uncertain powers of direction.”

36. Other local authorities expressed concern that looked after children were not included in the categories of children whom the Code permits to be placed via the FAP. One said:

“LAs have placed Looked After Children with complex needs in residential care within the borough. These include children with complex risk assessments or needing alternative provision which the school may need to pay for. It has been more problematic to find appropriate provision for these children. Looked After Children would usually only be placed in a good or outstanding school which limits where they can attend. If these children were not Looked After then the Fair Access Protocol could be used to ensure that children were fairly allocated. As the Fair Access Protocol cannot be used then we are reliant on good will of schools to admit Cared For children. This can lead to some schools feeling overloaded as they are being asked to take children where another school is not due to its Ofsted category. It would be helpful to consider an amendment to the School Admissions Code to give some discretion for Looked After Children to be considered under Fair Access.”

Some suggested that they had used the FAP to place children who were both looked after and fell within one or more of the FAP categories. Others were not doing this but were of the view that looked after children should be covered by the FAP. Still others did not appreciate that previously looked after children were eligible to be covered by the FAP.

37. Against that background, and because of the significant numbers of direction and direction advice cases which concern looked after children, I thought it would be appropriate to set out clearly the understanding of adjudicators as to the meaning of the relevant Code provisions. As some local authorities noted, looked after children are not covered by FAPs. This is not, however, because these children are to be treated less favourably or their school placements resolved less quickly than other children. Rather, as the DfE guidance “Promoting the education of looked after and previously looked after children” emphasises “the local authority, as a corporate parent, [should] not tolerate drift and delay where children the authority looks after are without an education placement that is appropriate to their assessed needs. This includes using their powers of direction in a timely way rather than delay issuing a direction as a result of protracted negotiation”. To put it another way, the placement of these children should not wait upon the FAP but secured quickly using the local authority’s own direction powers or asking the Secretary of State to direct an academy to admit the child if necessary.

38. For previously looked after children the situation is slightly different. Contrary to the apparent beliefs of some local authorities, previously looked after children can be included in FAPs as paragraph 3.17m) of the Code makes clear. The reasons for this are set out well in the Government response to consultation on the current Code which said, so far as is relevant here: “In most cases, using the FAP to place a previously looked after child should be unnecessary as there are other ways of ensuring these children secure a school place. For academies, the Secretary of State can direct a school to admit either a looked after or previously looked after child. For maintained schools, the local authority and Schools Adjudicator have powers to direct a school to admit a child where the child has been permanently excluded or refused admission to each school within a reasonable distance from the child's home. Because there is a higher threshold for directions to maintained schools, and following discussions with the Chief Adjudicator, we have decided to include previously looked after children as a category for placement via the FAP, but only when the local authority has been unable to promptly secure a school place.”⁵

Discontinuance and establishment of and prescribed alterations to maintained schools

39. We considered and approved three sets of statutory proposals in two different local authority areas. All three concerned proposals to discontinue (close) maintained

⁵ DfE Changes to the School Admissions Code: Consultation Summary and Government Response

infant and junior schools and in each case also to establish new maintained primary schools in their stead.

Land matters for maintained schools

40. We had no cases in 2023 relating to land.

Part 2 - Summary of local authority reports September 2022/August 2023

41. This year 100 reports were received by the deadline and the final report was received on 1 February 2024.

42. I am as ever grateful to local authorities for the thoughtful comments made in their reports. We always invite local authorities to comment specifically on how easy the template was to complete and for their views on the relevance of the questions we ask. As a result of these comments, we are working with the DfE and a number of local authorities to make improvements to the template to be used in 2024 and to make the questions asked more pertinent. I am particularly grateful to officers from Hertfordshire, North Northamptonshire, Oxfordshire and Surrey who have given their time to work with us and with the Department on a project to make changes to the report template.

43. Last year I noted changes to the Code. These included changes to the reporting cycle for and periods covered by local authority reports to me. Consequently, there were limits to the extent with which comparisons could be made between the contents of last year's reports and those of previous years. It is possible to compare this year's reports more directly with last year's. In doing so, however, there were some changes in the questions asked this year compared to last year. We did not repeat this year the questions we asked about changes to the definition of previously looked after children to include internationally adopted previously looked after children. Nor did we ask about the impact of changes to the Code in relation to in-year admissions. We did, however, add some new questions. These were:

- a. where there had been a change in the number of children referred to the FAP between 1 August 2022 and 31 July 2023 compared to the previous year, what the local authority considered the key reasons for this change to be;
- b. whether the number of in-year admissions for schools for which the local authority co-ordinates in-year admissions had increased compared to last year;
- c. a request for comments on how well the in-year admissions worked for children other than those who are looked after or previously looked after and/or have special educational needs.

44. We also reinstated a question about the proportion of schools for which the local authority co-ordinated in-year admissions. This question had been asked prior to the Covid-19 pandemic.

Admissions in the normal round

Co-ordination of admissions at normal points of entry

45. The overall success of the co-ordination process for admissions at the normal points of entry which authorities have reported in recent years has continued. As in previous years, the vast majority have said that the process has worked well, or very well in their area, and significant numbers report that a high proportion of parents are offered their first preference of school, or one of their highest preferences.

46. The trend of continuing improvement for admissions to Reception and other relevant years has continued, but there has been a slight reversal of the reported improvement in recent years for Year 7 admissions.

47. For admissions other than to Year 7, a higher proportion of authorities have said that co-ordination went “very well” than did so last year. Two years ago, a relative worsening of the success of co-ordination for Year 7 admissions was also noted. Those figures were largely explained by specific problems caused by the Covid-19 pandemic, and it would seem that there have similarly been identifiable difficulties which have attended the 2022 Year 7 admission round.

Table 6: Percentages of local authorities reporting how well co-ordination worked in each category in the 2022 admission round (figures in brackets are the corresponding percentages for the 2021 admission round)

Admission year	Not well	A large number of small problems or a major problem	Well with a few small problems	Very Well
Reception	1(0)	0(0)	12(17)	87(83)
Year 7	0(0)	8(3)	23(22)	69(75)
Other years (where relevant)	0(0)	1(0.7)	13(15)	86(84)

48. The more general picture of even higher levels of success of co-ordination in 2022 has been accounted for in their reports by authorities by good co-operation with neighbouring authorities and with schools in their own area, by the increased use of on-line applications, by the falling birth-rate allowing a higher proportion of parents to achieve their first preference for a Reception place, and once again by the effectiveness

of the Pan-London co-ordination process. Typical of the comments made by authorities were the following.

“Generally the processes worked well across all school types, with good cooperation.”

“Over 90% of applicants received their first preference. All [LA] pupils were allocated a school place.”

“All parents received an offer of a school place on the same day and we work effectively with our neighbouring authorities to share information in a timely manner.”

“The Pan-London co-ordinated process continues to work well and is successful in achieving its aims of eliminating multiple offers, simplifying the application process, and increasing the number of pupils who receive an offer from one of their preferred schools.

49. The operation of national offer days for both primary/infant/junior and secondary admissions provide significant benefits for applicants who wish to apply for local and out of area schools, by providing a clear, streamlined approach for the application process and reducing the stress and anxiety of having to wait for results from different local authorities issued on different dates.

50. A similar number of authorities to last year have nevertheless reported that there were again problems with the exchange of information with their neighbours, and some have repeated the call for there to be a nationally determined deadline for data exchange. One put it like this:

“We continue to experience delays in receiving data from neighbouring authorities which is very frustrating and makes the process more complex than it needs to be. We would fully support the introduction of a national exchange date for all local authorities, to ensure the effectiveness and success of the co-ordinated scheme. This would ensure that all LA’s work more effectively and collaboratively, minimising delays and pressures on LA staff and resourcing”.

51. Slightly fewer authorities than last year have said that there have been difficulties during co-ordination with schools which are their own admission authority. One voiced the common concerns of those that were reported succinctly:

“OAA schools not following the timetable, OAA schools requiring additional support to understand their admission policy and ensure ranking is correct”.

52. One local authority in the West Midlands has nevertheless reported that locally negotiated data exchange dates with neighbouring authorities have been adhered to and have proved effective.

53. By contrast, others report improvements with own admission authority schools, as in:

“Well established working relationships with our neighbouring LAs and with other admitting authorities operating within our area aid the smooth operation of this process. 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.”

54. Problems caused by the timetable for the completion of Education, Health and Care (EHC) plans (that the deadline for their completion for transfer to secondary schools is very late in the normal admissions round process) were mentioned by a few more authorities than last year. One large shire county authority said:

“The same issues were faced, as every year, with the placement of children with EHCPs given that the deadline for final EHCPs is 15 February, only 2 weeks prior to national allocation day and after the iterative process has been completed.”

55. Other authorities said that it was frequently the case that EHCPs were finalised after national offer day for secondary transfer (1 March), and one referred to their experience that late completion was now a greater problem because of the shortage of places overall for Year 7, which I shall refer to again shortly. However, I will also be reporting below in the section dedicated to children with special educational needs and/or disabilities on the efforts that many authorities have made to overcome this problem, at least within their own administrative processes.

56. Last year I reported the comments of one authority on the shortage of Year 7 places in their area. This year, around 20 said that this had become a problem for them, making it one of the issues most frequently cited by authorities. Many have said that they have been able to manage this bulge in demand, as in this example:

“The year 7 transfer group was an exceptionally large year group therefore increased demand on secondary places. This has resulted in many of the secondary schools exceeding their Published Admissions Number (PAN) prior to National Offer Day and has enabled as many on-time applicants to be offered a school place within as reasonable a distance from their home address as possible.”

57. However, many others were less successful, reporting parental dissatisfaction with their allocated places leading to increased appeals and larger numbers of parents exercising their right to home educate. For example, one authority said:

“The number of Year 7 (normal point of entry) applications received this year is much higher than last year. This has resulted in some children being without a school place for September. A number of parents have secured school places over the summer term through the appeals process, but some children remain

without a school, which has resulted in some dissatisfaction with the admissions process and children out of school at the start of term”.

58. A small number of authorities complained this year that their efforts to secure sufficient secondary school places in their area had been frustrated by the late delivery of promised new free schools or new premises for existing free schools. However, an urban local authority in the north of England has also been able to ensure that the effect on children of these difficulties has been minimised. It said:

“[LA] is currently facing significant secondary school place pressures due to the delays in the permanent buildings for two DfE free schools. However, this process has run smoothly. Modelling of expected place offers has been conducted throughout the year and has been used to inform where additional bulge classes are needed in other secondary schools to make up for the reduced intakes of the two new schools while they are on temporary sites. A number of secondary academies and maintained schools have worked with the local authority to offer places over PAN to ensure than all on-time applicants received an offer on national offer day.”

The admission of looked after and previously looked after children PLAC at normal points of entry

59. Looked after and previously looked after children continued to be well served, or very well served by the admissions system at normal points of entry in the school year 2022/2023. Table 7 below compares the percentages of authorities saying that the four different groups of children about which information was sought were either well, or very well served and compares these figures with those for the previous academic year, 2021/2022. The only group of children for which any local authority said children were less than well served was for children looked after by the local authority but at school in another authority’s area, and this was just one local authority.

Table 7: Percentages of authorities saying different groups of looked after children were either well served or very well served in the 2022 admissions round and the 2021 admissions round

Group	2022/2023		2021/2022	
	Well	Very well	Well	Very well
Looked after children in home LA	4.0	96.0	5.3	94.7

Group	2022/2023	2022/2023	2021/2022	2021/2022
	Well	Very well	Well	Very well
Looked after children in another LA	18.8 Not well/well combined	81.2	22.3 Not well/well combined	77.7
Looked after children from another LA	12.8	87.2	12.1	87.9
Previously looked after children in home LA	10.0	90.0	8.7	91.3

60. Two of the four groups show a higher proportion of authorities saying they were very well served (and a lower proportion that they were only well served) than in the previous school year. As last year, one group for which this was not the case was those looked after by another authority but at school in the reporting authority’s own area, which means the position has got worse, albeit only slightly, in two successive years. The only authority which commented on this group said:

“..... children who are looked after or previously looked after by other Local Authorities (residing in [LA]) often require more intensive resources to gain confirmation of the applicant's status. Although this task is always completed in a timely manner the level of resource is far greater than gaining confirmation from a [LA] looked after or previously looked after applicant.”

61. I reported last year that there had been a welcome return to a trend of improvement for how well authorities judged previously looked after children were served, but this is the second group for which there has been a relative decline in 2022/2023. A similar number of authorities to last year have said that it remains difficult for some parents/guardians to verify the status of previously looked after children, especially where a different local authority to the one they are living in had been the child’s corporate parent.

62. One authority has taken the trouble to explain in detail how these status issues for previously looked after children remain problematical:

“There remain doubts in the definition of Previously Looked After Children in some neighbouring LAs; the DfE have assured us that, for priority to be given under this

criterion where the child has been under a Special Guardianship Order or Child Arrangement Order (SGO/CAO), that the SGO/CAO must still be in place at the time of application; some LAs believe the definition isn't explicit and so should include those who have been under one of these orders at any time, even if it has ceased and the child returned to the family home. Paragraph 1.7 of the School Admissions Code is not clear in this respect, and so there is inconsistency in approaches, and some LAs have taken legal advice which differs from that provided by the DfE."

63. This same authority has reported that the DfE is aware of this problem, and so it is to be hoped that it can be resolved in the near future, as no other issues specifically affecting this group were reported to me by authorities.

64. In spite of these difficulties, the general picture remains overwhelmingly positive, with the effectiveness of the admissions system (all but) exclusively described as serving the needs of this group of children well or very well. It is worth noting that particularly high numbers of authorities are now saying that looked after children in their own authority area are very well served at normal points of admission. Many reported that all schools in their area comply with the requirements of the Code concerning looked after and previously looked after children, and a significant number said that all schools (that is, including those with a religious character for whom this is not mandatory) give first priority in their oversubscription criteria to all looked after and previously looked after children. As a result, a number of authorities told me that all looked after and previously looked after children in their area are admitted to their first preference school. One said:

"All Looked After Children and previously LAC secured their first preference school successfully in all phased transfers (first time admissions, infant to junior transfers and secondary transfers); no school challenged placements whether under the LAC or previously LAC criterion."

65. About one in four of all authorities specifically mentioned the value of the work of their Virtual School on behalf of all categories of looked after children, and several that their admissions team has a dedicated member of staff who ensures that the need of all looked after children are met. The following comments are illustrative of the working practices which authorities have shared:

"[LA] dedicates resources for a LAC Admissions Lead to ensure all children on the Virtual School roll have an application submitted on time (as far as possible) at suitable schools."

"The Virtual School provides School Admissions with a spreadsheet containing details of all [LA] looked after children so that we can check to see that we get applications in on time. School Admissions Officers carry out weekly checks to ensure that all children who should apply, do so before the closing dates."

"There is excellent co-ordination and co-operation between the admission team and virtual school regarding normal point of admission. This involves two-way

communication to ensure that all appropriate children are included before applications are opened. Therefore, the admissions team are able to ensure that first preferences are provided and share back if there is any delay in the application for any looked after child, so that the Virtual School can follow up with social workers or carers. There is also positive communication with schools so that in each intake, there is not an unreasonable number of children within an annual cohort. If numbers are high for a school, the communication from the admissions team is vital, as it enables the virtual school to liaise with the school and if need be, allocate pupil premium funding to support enhanced transitions.”

66. Finally, I also need to record that a tiny number of authorities are still reporting that schools which have religious character in their area effectively disadvantage looked after children who are not of their faith of the school because of the combined effect of their faith-based oversubscription criteria and the local pattern of schooling. One described this effect in the following way:

“The main difficulty we face is with faith schools. Despite [religious authority] guidance that best practice is to place all LAC/PLAC in the top criterion regardless of faith, we still have a number of [faith] schools that choose to split their LAC/PLAC criterion. As some of our [faith] schools are oversubscribed this means that non-faith LAC/PLAC are unable to access these schools. Places therefore cannot be offered at offer day, and the Virtual Head of the responsible LA has to pursue conversations with the school and potentially direction in order to get those pupils admitted for the September start. This creates further uncertainty for these vulnerable young people when all their peers have confirmed school places.”

Children with special educational needs and/or disabilities at normal points of entry

67. Last year I was able to report that very many authorities had told me of a generally positive picture for this group of children concerning school admissions in the normal round, but that there had also been difficulties concerning:

- a. the timetable for the completion of EHCP revisions for children moving between phases of education and the admissions process
- b. placements of children with EHCPs made by neighbouring authorities
- c. growing resistance from schools to admit children with EHCPs which name the school.

68. That picture has been repeated for the 2022/2023 academic year, and in addition many authorities have reported this year that they are facing a surge in demand for new EHCP assessments and many that there is a shortage of specialist provision.

69. The broad background of authorities reporting that children are well served is typified by the comments this year of two large shire counties:

“There are no significant issues around the admission of these pupils. Children with an EHCP are prioritized for both primary and secondary schools with places determined before the final round of allocations. Pupils without an EHCP are considered under the medical, social, welfare, criteria where there is compelling professional evidence that one school can meet a pupil's needs.” And

“We don't routinely have any problems in this respect and in the main we meet our statutory timelines.”

70. As previously, a large number of authorities, about one in five of the total, have been keen to report the quality of their administrative arrangements, either in the provision of dedicated teams of officers for this group, or in the quality of the liaison which takes place between separate SEND or early years teams and admissions teams.

Illustrative of the comments made by authorities are:

“For children transitioning into a mainstream school for the first time and for those transitioning between the primary and secondary phase [LA] has a structured process which ensures children are admitted to the preferred setting at the appropriate time. The LA and schools work collaboratively to ensure that children have a well-supported transition plan in place.”

“There is a specialist SEND team who have responsibility for educational provision for pupils with SEND and their admission into mainstream schools. There are positive and effective relationships between the SEND and school admissions teams to ensure that the appropriate educational establishment is secured for pupils with an Education Health and Care Plan even when a school is at its PAN.”

“[LA] has an established process in place for securing the right provision for children with SEND at the right time. [LA] works closely with early years settings, schools and professionals across health and social care to identify needs at the earliest point to aid children's transition into school and forward plan suitable specialist placements accordingly.”

71. One authority described its comprehensive approach in this area in the following way:

“[LA] allocate places for children who have an Education, Health and Care Plan in accordance with the SEN Code. We offer parents their preferred school or academy for annual intakes (even where this is within a neighbouring authority). SEND officers identify children who have a current EHCP and those under statutory assessment. The Early Years Co-ordinator identifies pre-school children who have SEND to ensure places at preferred schools. There is increased emphasis on early identification and we now have an inbox link to Health in order to identify early year's children who have complex or significant needs.”

72. Nevertheless, a number of authorities report a continuation of many of the difficulties which I mentioned in my last Report. The placement of children in mainstream schools across authority boundaries continues to create problems. One said:

“..... other boroughs do not coordinate applications through the local authority and tend to apply directly to schools. This way of consulting on school places for children with EHCPs makes it extremely difficult to keep track of all SEND children being admitted to our schools. In some cases, schools are then expected to allocate above their PAN to accommodate children; admissions had not been made aware, so the children were not included in the initial allocation process by the local authority. There needs to be legislative clarity on who should be informed of EHCP school allocations.”

73. As last year, about twenty authorities have complained about the difficulties caused by the 15 February deadline for finalising the EHCP revisions which take place as children transfer between phases of schooling, and about the timetable involved in the revision process. I commented last year that any resultant over-PAN admissions, while better avoided, nevertheless clearly serve the interests of children who need a school place, and that many authorities (as illustrated by the remarks I have quoted above) do feel they have been able to manage at least their own teams to avoid such situations. It remains the case however, that some authorities still struggle with this matter as a result of factors which are outside their control, as seen in the following remarks:

“Any difficulties chiefly arise in respect of the cohort of children who do not yet have a finalised EHCP at the time of application for reception. Where a nursery has identified that a pre-school child requires a plan at a point in the year where the 20 weeks process means the plan will not be finalised in advance of the allocation process, this leads to schools being required to admit over numbers later on in the process, which can be challenging for the smaller schools which have limited physical space. Our Early Years’ Service supports pre-school settings to identify additional needs early in order to minimise the number of children affected by late application for an EHC Needs Assessment. Despite this mitigation, there will always be circumstances where this challenge presents, including movers into County and children who do not start attending a nursery until a few months before starting school.” And

“The mismatch between deadlines that SEND colleagues are working to and National Offer Day for Year 7 continues to be a difficulty. Any plans that are finalised mid February are generally too late to be included in the initial allocation and the Admissions needs to balance late changes with the knock on impact particularly with other LAs. Some of the late EHCPs are outside the LA’s control where the child’s primary school has started the 20 week needs assessment too late to be included in allocation. Some neighbouring LAs work to different timescales and have already finalised well ahead of Offer Day and are unable to accommodate late changes.”

74. A further factor which a number of authorities have told me about which is adding to the difficulty of meeting the 15 February deadline is the growing number of assessments and therefore of children with EHCPs. Typical comments are:

“..... there has been extremely high demand for new EHCP assessments with the number of children and young people with an EHCP more than doubling (102% increase) in the last five years. A higher proportion of children and young people with EHCPs are also being placed in mainstream schools due to both a desire to increase inclusion within mainstream settings and the lack of available specialist places. As a result, it has been increasingly challenging to complete assessments and reviews to coordinate placements with the national School Admissions Code deadline dates. This is particularly problematic reception admissions given a particularly large growth in EHCP assessment requests in early years which are not all completed in time for primary national offer day.” and

“Children with an EHCP continue to be a challenge when trying to coordinate and ensure they are successfully incorporated as part of the coordinated admissions process without having schools having to admit over PAN. Ever increasing numbers of children with an EHCP and a lack of specialist local provision increasingly means mainstream schools are being approached to admit children with high level needs.”

75. The shortage of specialist places, mentioned last year by only one authority, was this year reported in nearly one in ten of the responses. Some put the position in stark terms:

“We do not have enough Special School places and so are allocating children into mainstream who are evidently not suitable for this kind of schooling.”

“We were not able to secure special school places or unit places for all children whose EHCP indicated that they should have one. We also faced lots of challenges from mainstream schools to admit children with EHCPs.”

76. These comments serve to illustrate the interconnected nature of the difficulties which are being reported. More children are being assessed as having special needs or disabilities, more assessments are likely to mean more late finalisation of EHCPs, leading to more over-PAN admissions to schools, the resistance of which to the admission of children with EHCPs is reported by some authorities to be increasing. And specialist places are at a premium. Each of these affects each of the others. Examples of what authorities have said are:

“The local authority continues to see an increase in objections from mainstream schools due to difficulties with recruitment and increasing numbers of young people with EHCPs in each school.”

“We still receive a number of consultation responses from mainstream schools (for children with an EHCP) which indicate the schools [sic] inability to meet the

identified special educational needs and provision requirements in Section F on the grounds that they “do not offer such provision”, or admission would “not be in the best interests of the child”. Families still report to us that school SENCO’s advise them that needs will be better met within a special school environment and as such we then have parents pursuing special, when it would otherwise not be required.”

77. A small number of authorities have responded to these pressures by seeking to augment their specialist provision. One told me:

“In early 2020, [LA] pledged to create an additional 450 specialist provision places by 2024. This programme aiming to create additional capacity, within [LA’s] SEND estate, to deliver sustainable sufficiency of places and improve areas of the existing estate to create improved accommodation for children and young people, with special educational needs and disabilities. The first phase of this programme has created and delivered a total of 142 special school places. The second phase aims to deliver the full quota of places by 2024. This will support to improve outcomes and attainment as more children and young people, with EHCP’s, will be able to access suitable education within their own locality.” and another said:

“ [LA] has a minority of Secondary schools that have identified specialised adaptations and resources for children with disabilities or additional physical needs. These schools still have this aspect included within their admission arrangements (as shown below) for those schools to admit children who require specialised resources e.g. mobility difficulties/wheelchair users. Children identified as needing specialist facilities that go beyond expected reasonable adjustments will be given priority for this school if it is the nearest school with suitable resources.”

78. Authorities again report different approaches within the admissions system to children who have special educational needs but no EHCP. Many report the use of “medical or social” or “exceptional circumstances” oversubscription criteria in the admission arrangements of schools, intended better to enable the parents of such children to access a school for which they have a preference. Others take the view that some schools admit a disproportionate number of children with difficulties, and that this is unhelpful. Some encourage schools simply to disregard special needs (other than an EHCP) in making admission, but to act inclusively. The Code does not prevent either approach, of course, since paragraph 1.9 h) only says that schools must not discriminate against or disadvantage children with disabilities or special educational needs in their admission arrangements.

Admission other than at normal points of entry (In-year admissions)

In-year admission processes

79. Less than a third of local authorities reported that they coordinate in-year admissions for all schools in their area; some do not fulfil this function for any schools. Most local authorities reported that where they did co-ordinate in-year admissions, they received more applications in the reporting year than in the previous year.

80. In my report last year, I noted that a small number of authorities said that they had encountered problems in dealing with schools for which the local authority was not the admission authority. This year I received a significant number of responses expressing a wish for the law to provide for all in-year admissions to be coordinated by local authorities. Reasons for this view included difficulties caused to parents by the requirement to make multiple applications, and delays caused by some own admission authority schools which may not appreciate their responsibilities under the Code. Some authorities also expressed safeguarding concerns:

“In-year needs to be mandatory for local authorities to administer. Despite the guidance in the Admission Code it still leaves a possibility of children missing education due to schools not administering their own applications. There would be no opportunity for children missing education if the local authorities administer all under co-ordination.”

Looked after and previously looked after children

81. A number of local authorities described wider pressures on the education system which made the placement of looked after and previously looked after children when they needed a school place outside the normal admissions rounds more challenging than in previous years. The pressures cited included high numbers of pupils on roll, particularly in secondary schools, with fewer available places for in-year admissions; and fewer good or outstanding schools in which to place children as some schools had received lower Ofsted grades in their most recent inspection. Several authorities told me that there was an increased reluctance from schools to admit children in-year, with one stating:

“As for other vulnerable groups of children post-Covid, this year we experienced greater resistance than previously with the in-year admission of looked after children. Reasons given for this resistance include ‘challenging’ year groups and financial pressures or insufficient resources to meet the additional needs of looked after and previously looked after children”.

82. Responses from local authorities demonstrated that effective relationships and clear processes within and between bodies are fundamental. I was provided with many examples of working practices that authorities find to be successful, with the role of virtual schools often cited as key:

“The in-year admissions team meet with Placement Officers from the Virtual School fortnightly to discuss looked after children with pending in-year admission applications and to identify issues with applications for in-year admission promptly. This ensures that where it is necessary to escalate cases this is done with minimum delay.”

83. Most local authorities reported that their own processes very effectively served looked after children living in their own area; processes between different authorities were judged to be slightly less effective. Many gave examples of difficulties between authorities which hampered the swift provision of school places, including a lack of response to enquiries and failure to inform a local authority when a looked after child had been placed in their area. Some authorities stated that insufficient information may be received when applications are made to them; others that some authorities are at risk of breaching GDPR by the detail and nature of the information they request or provide⁶. A small number of authorities expressed the view that admission teams in other areas do not sufficiently challenge schools who are unwilling to admit looked after or previously looked after children, and some described the additional challenges faced where a child has complex needs or may require a placement in alternative provision:

“The difficulties we have with admissions are with Other LAs who do not answer email or the phone and then there is delay with admission into school. Of particular note when we are trying to secure an admission for a CLA with an EHCP in some other LAs this is particularly difficult and often leads to very long delays which are unfair on the child as a result of the SEN dept not responding to communication or acting swiftly enough to secure a school place.”

84. Challenges involving schools for which the local authority was not the admission authority were referred to by several authorities regarding looked after and previously looked after children. One told me:

“OAAs [own admission authorities] having control over their in-year admissions means that they are less likely to communicate properly with the LA, they are less likely to provide vacancy information (even though it is statutory), and parents have to apply for a myriad of schools rather than apply to a central place. Both LAC and PLAC applicants are unfairly bearing the brunt of this issue ... It takes too long, and leaves vulnerable children without school places. The risk to children is exacerbated by the fact it is impossible to track their movements effectively, meaning the risks of exploitation of the system and our children is too high. It is

⁶ It is concerning if local authorities consider that the UK GDPR may prevent the processing of data necessary to fulfil their statutory duties. Article 6(1)(e) allows the processing of personal data where necessary to perform a task relevant to an official function for which there is a clear basis in law. Article 9(2)(g) allows the processing of special category data where this is necessary for reasons of substantial public interest on the basis of law.

confusing, difficult for parents, and not fit for purpose. While not directly discriminating against LAC/PLAC applicants, there is indirect discrimination - they are the most affected, due to the frequency of movement, and the complexities of finding and maintaining placements.”

85. I have written at some length in past reports about the PAN, what it is and is not and when it does and does not apply. Adjudicators have in innumerable cases drawn the attention of local authorities and other admission authorities to the provisions of the legislation and Code that make clear that the PAN applies only to normal years of entry. Alongside annual reports, we have in the course of case work and in published determinations explained that the test for refusing a child a place outside the normal year of entry is whether admission will cause prejudice to the provision of efficient education or use of resources and for a looked after child whether that prejudice will be serious or significant. Against that background, I am disappointed to note that it remains the case that too many admission authorities continue to use the PAN which applied when a particular cohort joined the school to determine if that particular year group is full, and that misapprehensions about PAN are also held by a number of authorities. Several authorities told me that schools are reluctant to “go over PAN” or had “capped” their PAN or that they, the local authority, encourage schools to admit over PAN. I must, as in previous years, draw attention to paragraph 1.4 of the Code which states unequivocally that the PAN applies only to the relevant age group.

86. The Code makes it clear that the test for whether a child should be admitted as part of a normal in-year application for admission to all year groups other than the relevant year group is whether prejudice to the efficient use of resources or efficient provision of education will arise. Prejudice is not based on whether the number of children in the year group will be higher or lower than the PAN that applied when that cohort joined the school and does not automatically arise when that number is reached. I am concerned that some local authorities and admission authorities may not fully appreciate that it is necessary to establish prejudice in order for an admission authority to refuse to admit a child in-year. One local authority told me that they are “reliant on good will of schools to admit Cared For children” and another that “The Code only requires schools to prioritise looked after children in their oversubscription arrangements but the expectation is they will admit.”

87. Many local authorities told me of challenges regarding in-year admissions for looked after children seeking admittance to Year 10 or Year 11, especially unaccompanied asylum seeker children. An unaccompanied asylum-seeking child (UASC) is a person under 18, applying for asylum in his or her own right, who is separated from both parents and is not being cared for by an adult who by law has responsibility to do so. Once a UASC has been looked after by a local authority continuously for more than 24 hours, they become a looked after child and all the same rules and requirements apply to them as to any looked after child.

88. Some authorities described a reticence from schools to admit these children, and recognised the difficulties faced by schools in integrating pupils at this stage of their

education. Authorities told me of further complications where the age of applicants is in dispute, or where applicants have special educational needs. Several described tensions between school priorities of focussing on GCSE outcomes for existing pupils and providing education appropriate to the needs of UASC children. The challenges faced by authorities undoubtedly vary, and approaches to addressing these are dependent on circumstances including pupil numbers. One authority told me:

“An example of our proactive practice is our working partnership with a local college, through which we commissioned for the second year a bespoke alternative educational package for Year 11 children from overseas, including unaccompanied asylum seekers, arriving in the summer term which meant they had access to education and were able to experience being in an education setting.”

Table 8: Summary of responses in relation to specific groups of looked after and previously looked after children and how well served they are by in-year admissions

	Not at all	Not well	Well	Very well	Not applicable
Looked after children	1	4	50	95	2
Children looked after in other LA areas	0	22	87	38	5
Looked after children from other LA areas but educated in your area	0	5	72	73	2
Previously looked after children	0	3	57	89	3

Children with special educational needs and/or disabilities

89. Many authorities reported that an increase in the number of children with SEND, including complex needs, placed additional pressures on in-year admissions and that there was a shortage of special school placements. Some described the impact of this, including children being unable to access specialist provision until the start of the following school year and instead remaining in a mainstream school not suitable to their needs, or being out of school altogether:

“We do not have sufficient Special School places and for some, mainstream is not an option. These children can therefore remain out of school until further action/alternatives are found.”

90. In my report last year I mentioned the challenge for local authorities of placing children who had moved to the UK but had not been assessed for any special needs. The migration of children was a factor cited by many authorities this year as one which placed pressure on school places, in both mainstream and specialist provision. In some areas this migration took the form of families moving from one area of the UK to another, or significant numbers of children returning from abroad. In most cases, however, the

challenges of migration related to children entering the UK for the first time, including as refugees and asylum seekers:

“there is an increasing number of children moving into the borough from overseas who have highly complex needs which are likely to need specialist provision, but require an assessment for an EHCP. . . Schools’ resources are increasingly stretched, and Headteachers are concerned whether they are able to appropriately support the child. This often makes the final allocation difficult, delaying the child’s entry into school. The complexity of these cases is adding additional pressure on the admissions team and supporting services. It is also the case that there are no vacant specialist school places within the borough and they are scarce elsewhere, so schools, generally, are being asked to educate children who would, in previous times, be educated in special schools.”

91. Authorities told me that schools were increasingly reluctant to admit children with SEND in-year, both with and without EHCPs. Reasons given for this included funding challenges, concerns regarding meeting the child’s needs, and capacity issues in that such schools already had a significant number of pupils on roll with complex needs. Some authorities recognised the impact this can have on schools that are not full:

“...there are still concerns over the impact on schools that are unsubscribed. Schools with places will end up taking a higher proportion of pupils arriving with needs. Often these are pupils arriving after October census so come with no initial funding. School budgets are already stretched and requests to admit further pupils with complex needs often leads to concerns being raised by heads over the impact this will have on their cohorts, their staff and their budget. With no way to provide interim funding between October censuses, the issue is very hard to resolve. An ability to recognise the issues schools face with such cases and to provide support funding would help alleviate this issue and thereby speed up the process of placing pupils into education. With regards placing in-year pupils with EHCPs, concerns remain that some schools will make unreasonable demands regarding the level of funding required. Such disagreements take time to resolve. This takes up vital admin resource within an already stretched SEN team whilst also delaying the pupil being placed into education. An increase in the number of pupils with EHCPs requiring placement combined with an approach to place more pupils into mainstream settings, together with stretched resources in those mainstream schools, is placing significant strain on the whole process.”

92. In paragraphs 85 and 86 of this report I outlined the requirements of the Code relating to normal in-year applications for admission to all year groups other than the relevant year group, and the requirement for admission authorities to establish prejudice to the efficient use of resources or efficient provision of education in order to refuse admission. This requirement applies to children with SEND who do not have an EHCP. For those with an EHCP, once a school is named on a child’s plan then that school must admit the child. This legal obligation is enshrined in the Children and Families Act 2014 and although local authorities must consult with schools prior to naming them in an

EHCP, this consultation does not constitute seeking agreement in that a school may be named despite it objecting to this. I was told by a small number of authorities that they not only saw an increase in the reluctance of schools to be named on an EHCP, but also that some are resistant to admitting even once they have been named. It seems that in some cases children have been left without a school place:

“Some schools are refusing to comply with the LA naming them in an EHCP and we have to work hard to negotiate start dates especially mainstream secondary schools. A growing number of pupils with an EHCP are CME as we can’t find a school who agrees they can meet need.”

Table 9: Summary of responses in relation to children with special educational needs and/or disabilities and how well served they are by in-year admissions

	Not at all	Not well	Well	Very well	Not applicable	Don't know
Children with an EHCP	2	11	69	63	6	
Children who do not have an EHCP	1	15	86	45		4

Fair Access Protocol

93. Many local authorities reported an increase in the number of FAP referrals compared to the previous year; where there had been a decrease this was usually due to specific factors that had necessitated a large number of referrals the previous year and which no longer applied in 2023, such as the placement of Ukrainian children. One authority told me that referrals had quadrupled in the space of two years; another that there were 255 secondary referrals in their area in 2023, up from 35 in the previous year. As with other aspects of in-year admissions, many authorities cited the overall shortage of school places as a factor along with migration, with the FAP process being used in 2023 for admissions which would have previously been resolved via the usual in-year process:

“Previously really only children who have been PEX [Permanently Excluded] have been difficult to place. Due to pupil place pressures with some year groups in schools being at capacity, and significant numbers of children moving into the LA, increasingly other IYFA categories are now being utilised to place these otherwise unplaced children equitably between schools.”

94. Other reasons cited for increased FAP referrals included an increase in challenging pupil behaviour, including a rise in permanent exclusions, as well as children returning to the school system following a period of elective home education. Some authorities told me of pressures involving needs of students and limited school resources:

“The more children the schools are placing on roll, the more issues and challenges

the schools are presented with including more children with SEND and behaviour issues. As a result, schools are now becoming more resistant in taking children under the FAP with additional needs including those who have been permanently excluded or have a history of challenging behaviour, which also includes LACs [looked after children] as the resources in school are overstretched.”

95. As was the case last year, a number of authorities referred to the provision in the Code for referring children to the FAP who have been refused a school place on the grounds of their challenging behaviour. Some authorities appreciate the definition within the Code of what constitutes challenging behaviour, but others reported that schools are not always applying the Code correctly or that the Code is not sufficiently clear:

“The greatest challenge despite the new Admissions Code is managing the referrals for ‘Challenging Behaviour’. In many cases schools refuse children with a level of challenging behaviour despite having places and refer to the IYFA Protocol even though the level of challenge is not consistent with the Local Protocol or the framework on referrals has detailed in the Admissions Code.”

“Schools are increasingly using challenging behaviour to refuse entry. The definition in the code not explicit enough - no examples to benchmark.”

96. Some authorities regarded the position of schools who are their own admission authorities as a limiting factor in the provision of sufficient school places (without which greater use of the FAP process is required) as in their view schools may be restricting their admissions where they do in fact have space to admit additional children:

“The LA has very little control over capacity in non community schools whilst still retaining overall responsibility for ensuring sufficient places across the borough to meet expected demand. More powers are needed by the authority to control what capacity schools are working to, so as to make efficient use of resources and place pupils where physical space exists to do so. Without a change in this area, the issue will remain and LAs will be left with no option but to use additional funding to place pupils into education”

97. In terms of capacity, it was suggested to me that the requirement under paragraph 3.17 I) of the Code for children to have been out of school for four or more weeks before referral to FAP may be hindering the swift provision of school places:

“The LA currently has capacity issues with respect to school places ... This means that when families move into the area, we are not always able to offer places through the ‘in-year admissions’ process and the children are unplaced. However, we note that the relevant fair access category refers to ‘children who have been out of education for 4 or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home’. We feel it would be useful to remove the 4 week requirement which would enable these unplaced children to be placed more quickly.”

Table 10: The number of children admitted to schools under the Fair Access Protocol

Type of school	Primary aged children	Secondary aged children
Community and voluntary controlled	3183	1782
Foundation and voluntary aided schools and academies	3944	15082
Total	7127	16864

Table 11: 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
1	1	61	85	0

Directions

98. In paragraphs 27 - 38 of Part 1 of this report, I discussed the numbers of requests from local authorities to the Secretary of State to direct academies to admit named children along with referrals from maintained schools of local authority notifications of their intention to direct the school to admit a child. I noted the increase in the number of such cases. I deal here with the reports from local authorities about the numbers of directions they have made to maintained schools.

99. For children who are not looked after, local authorities have the power to direct any maintained schools for which they are the admission authority in their own area to admit a child but only if that child has been refused admission to or permanently excluded from every school within a reasonable distance of his or her home. For looked after children, a local authority can direct any maintained school – including schools outside its own area – for which it is not the admission authority to admit a child⁷.

Table 12: The number of Directions made between 1 August 2022 and 31 July 2023 to maintained schools for which the directing local authority is not the admission authority to admit children (including children looked after by the local authority but resident in another area)

Total number of children	Of which, looked after	Of which, not looked after
134	13	121

⁷ A local authority seeking to place a child in a school in its own area for which it is the admission authority would not need to make a direction; it would simply admit the child.

100. This number represents a large increase on the figures for last year in which there were a total of 17 such directions, of which two related to looked after children. I explained last year that the 17 was a significant reduction on the figure of 60 for the last year before the Covid-19 pandemic and that I had not collected these figures during the pandemic as part of measures to reduce the burdens on local authorities. A number of local authorities commented on making directions and the challenges they found in the process:

“...the direction process is complex and long winded and cannot always deliver the solution we want to achieve so we have sought solutions outside of the need to direct a school to admit at child.”

101. Local authorities can direct the admission authorities for schools in other areas to admit looked after children. From the comments made, it would seem that navigating admissions processes in other local authorities for our looked after children continues to be challenging at times with one saying:

“Although the option to direct schools is helpful, it is a long and slow process which causes more drift and delay for children in the most vulnerable situations.”

Other matters raised by local authorities

102. Some authorities told me that an overall shortage of school places has necessitated over-spending on home-to-school transport budgets as there has been a requirement to place children at schools which are some distance from their homes.

103. I have in paragraphs 85 and 86 of this report dealt with the fact that the PAN applies only to normal years of entries and some of the erroneous beliefs held by schools and local authorities in relation to this and its implications for admissions outside normal years of entry. Several local authorities reported that capacity difficulties were exacerbated by some own admission authority schools “capping” their pupil numbers. That is, schools failing to apply the proper test of prejudice when receiving in-year applications and instead deeming year groups “full” based on a notional admission limit which is either the PAN which applied to that year group on entry or some other figure:

“Some schools have set a notional limit for outside of the normal round of admissions (the number they consider they can admit without it causing prejudice) substantially below the number that were admitted to the cohort when joining year 7 admission and below the capacity to admit pupils declared to the DfE in funding agreements. In some cases, the notional admissions limit is lower than the actual number of pupils currently on roll. The consequence of schools setting such low limits result in undersubscribed schools being the only ‘in-year’ option offered to parents, more referrals to the Fair Access panels and an increase in the number of appeals. The LA have asked schools to reconsider their position and align their notional admission number more closely with the numbers that were admitted to each cohort at the point of entry.”

Appendix 1 - The role of the OSA

104. 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. In relation to academies, adjudicators give advice to the Secretary of State on requests from academies for the Secretary of State to direct an academy to admit a named child.

105. 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.

106. Adjudicators are independent of the DfE and from each other unless two or more adjudicators are considering a case together. 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 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.

107. Throughout the period covered by this report there were twelve adjudicators, including the Chief Adjudicator. Two new adjudicators - Catherine Crooks and Tess Gale - were appointed following an open competition run in 2023 and took up post on 8 January 2024. Two adjudicators – David Lennard Jones and Ann Talboys - retired on 31 January 2024 and 31 December 2023 respectively. They had each served for more than ten years as adjudicators and before that in a range of roles in education. Both exemplify the very best of public service values and commitment. I count myself extremely fortunate to have worked with them.

108. Adjudicators are supported by a small team of administrative staff who are seconded from the DfE for this purpose. At the beginning of 2023 we had four staff, three of whom worked full time and one part-time giving us an FTE of 3.8 FTE. During the year, one staff member went on maternity leave and our Head of Secretariat moved to another role in DfE. We have been pleased to welcome new members of staff and very grateful that one longstanding member of the team has taken on the role of Head of Secretariat.

109. As in past years we sought and received 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 the period covered by this report, we successfully defended one application for judicial review. We also received one pre-action protocol letter which asked us to consider again arrangements which had already been subject to a determination in another case. We agreed that a different adjudicator would consider the arrangements afresh taking account of new and additional points made.

110. The OSA's costs in the financial year April 2022 to March 2023 were £553,000 compared to £529,000 the previous year. As set out in Appendix 2, our legal costs were high. This reflects the costs of defending the application for judicial review outlined in paragraphs 19 and 20 above. While we were successful, we were not able to recover all our costs from the claimant as he had obtained a costs capping order from the Court. Of course, he had to pay his own costs in full.

111. At the completion of each case, the OSA seeks feedback from all involved on how the matter was handled. This year 387 forms were sent out and 22 (which is six percent) returned. Overall, comments suggest confidence in OSA processes with one saying: "The analytical precision offered by [the Adjudicator] enabled us to see flaws in our current policy, and to make the necessary amendments. This helped us to ensure that our policy was clearer, more transparent, and robust; reducing the potential for challenge, and being fairer to prospective applicants." We do continue to receive comments expressing concern that we cannot give a definitive timescale at the outset of cases for the case to be completed and determinations to be published. We understand the frustration this can cause. However, every case is different and we cannot realistically predict at the outset how long any given case will take to complete. As explained above, we give the highest priority to cases involving individual children who may be out of school and then to cases where a decision would be particularly helpful in advance of the closing date for school applications.

112. We received one complaint about our handling of a case. The key points made in the complaint were that we had taken too long to deal with the case, that our processes and communications were not clear and that we should not consider "vexatious" complaints. I considered the complaint and concluded that the complaint was in some respects well founded. We had taken too long to deal with the case and had been responsible for unacceptable delays in communications. We had also not been as clear as we should have been at all times. I apologised for this and have sought to strengthen procedures to guard against a recurrence. I also explained we do not have the discretion to deem objections vexatious; we have a legal duty to consider all objections and any changes to this would be a matter for the DfE and ultimately Parliament.

113. We received six requests for information that cited the Freedom of Information (FOI) Act in the period 1 January 2023 – 31 December 2023. All were dealt with within the statutory timescales. Four were for information not held by the OSA as they concerned corporate matters such as procurement of equipment and services which for OSA is handled by the DfE. Two were for information which was held by the OSA. In one of these, all the information requested was disclosed. In the second, some information was disclosed and some was withheld as it concerned children's personal data and was exempt from disclosure under section 40 of the FOI Act.

Appendix 2 - OSA expenditure⁸

OSA Expenditure financial years 2022-2023 and 2021-2022

Category of Expenditure	2022-2023 £000	2021-2022 £000
Adjudicators' fees	378	396
Adjudicators' expenses	6	3
Adjudicator training/meetings	5	0
Office staff salaries	124	114
Office staff expenses	0	0
Office Administration costs /consumables	0	0
Legal fees (including costs of subscription to legal database)	40	16
Total	553	529

⁸ Information relates to financial years 2022-2023 and 2021-2022. The report covers the calendar year 2023 so far as it relates to the work of the OSA.

Appendix 3 - Table Index

- Table 1:** [Admissions cases by year and outcome](#)
- Table 2:** [Matters covered in past reports](#)
- Table 3:** [Variations to admission arrangements](#)
- Table 4:** [Directions to schools to admit pupils and advice to the Secretary of State on requests for a direction to an academy](#)
- Table 5:** [Children subject of Direction/Direction advice cases](#)
- Table 6:** [Percentage of local authorities reporting how well co-ordination worked in each category in 2021 \(2020 figures in brackets\)](#)
- Table 7:** [Percentages of local authorities saying looked after and previously looked after children are either well served, or very well served at the normal points of entry \(where relevant to themselves\)](#)
- Table 8:** [Summary of responses in relation to specific groups of looked after and previously looked after children and how well served they are by in-year admissions](#)
- Table 9:** [Summary of responses in relation to children with special educational needs and/or disabilities and how well served they are by in-year admissions](#)
- Table 10:** [The number of children admitted to schools under the Fair Access Protocol between 1 April 2020 and 31 March 2021](#)
- Table 11:** [Summary of responses on how well hard to place children are served by the Fair Access Protocol](#)
- Table 12:** [The number of directions made between 1 August 2021 and 31 July 2022 to maintained schools for which the local authority is not the admission authority to admit children \(including looked after by the local authority but resident in another area\)](#)



Office of
the Schools
Adjudicator

© Crown copyright 2024

You may re-use this document/publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v3.0. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

Visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

Email psi@nationalarchives.gsi.gov.uk

About this publication:

Enquiries OSA.Team@schoolsadjudicator.gov.uk

Download www.gov.uk/government/publications