



Office of  
the Schools  
Adjudicator

# **Office of the Schools Adjudicator Annual Report**

**September 2014 to August 2015**

**November 2015**

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## Introduction

This report, my fourth and final report as Chief Adjudicator, covers the period 1 September 2014 to 31 August 2015.

As in previous years the secretariat and adjudicators of the Office of the Schools Adjudicator have had a busy year as first we completed the many admissions cases lodged towards the end of the previous academic year and then after a short quiet period began investigating the new cases concerning admissions in September 2016. The revised School Admissions Code issued in December 2014 had some early impact on our work and recently we have been preparing to respond to the changes that come into force this year, in particular the earlier date of 28 February by which admission arrangements must be determined and the deadline for making an objection of 15 May.

The overall format of my report is much as previous ones so comparisons can be made year on year and I have, as usual, noted the progress made in response to the main findings reported last year. Against the main findings this year I have offered some recommendations for the Department for Education to consider which, if implemented, could assist in reducing further the level of non-compliance of admission arrangements. This would then benefit parents as they consider their preference for schools for their children by having the clearest, fairest possible criteria against which places are offered.

In writing this report I have reflected on the comments made to me about the ways in which my last report were of assistance to those responsible for admissions to schools and I hope the Secretary of State and others will also find this report useful.

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**November 2015**

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## Executive summary and main findings

1. The Office of the Schools Adjudicator (OSA) has once again had a busy year. Referrals were spread across the year, much as in recent years, but with fewer referrals of all types of admission and statutory proposal matters than in 2013/14. The peak for new objections came in late June resulting in cases being carried forward into the new school year. The bringing forward of the deadline for making an objection by six weeks to 15 May in 2016 should assist in completing more cases before schools close for their summer holiday. There have been some changes in the staff resulting in a year with 12 adjudicators and eight administrative staff. Everyone in the OSA works part-time except four of the administrative staff.
2. The revised School Admissions Code (the Code) that came into force in December 2014 and the amended School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) provided clarification on some matters. Examples include emphasising that it is a right for a child to attend school full-time from the September after their fourth birthday or to defer or attend part-time until reaching compulsory school age. Some new provisions were introduced such as enabling all admission authorities, if they so wish, to give priority for admission to children eligible for the pupil premium, service premium or the early years premium.
3. **Objections to admission arrangements** for all types of state-funded schools, other than 16-19 schools, are within the OSA's jurisdiction and have continued, as previously, to form the largest part of our work. The established pattern of more objections from parents than any other group was maintained. Regrettably, as previously, many of the enquiries to the OSA indicated that there is still a misunderstanding among some would-be objectors about the remit of the OSA. The School Standards and Framework Act 1998 (the Act) gives the adjudicator jurisdiction for the determined admission arrangements for a school and does not include the admissions process or the admission of individual children who are not allocated a place at the school their parents would prefer.
4. Objections often resulted from no or only partial consultation about proposed changes to admission arrangements. Other objections were stimulated because arrangements that had been in place and worked well for many years either no longer seemed fair because more children were seeking a place at the school, or because a change made by one school had an impact on children's chances of being allocated a place at that school or at any other preferred school. The largest single group of objections concerned the wording of admission arrangements in relation to admission out of a child's normal age group, in particular, the admission of children whose parents wish to delay their admission to the Reception Year for

a full year - the summer born issue. Overall, the same range of matters as referred previously featured again this year.

5. Adjudicators have again been concerned that although the Code is a very concise document some of our findings about the objections suggest that the admission authority had not read the Code and therefore failed to comply with its mandatory terms. Paragraph 14 sets out the *“Overall principles behind setting arrangements”* and says, *“In drawing up their admission arrangements admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”* Admission authorities need to test their arrangements against this paragraph as well as all the specific requirements in the Code.
6. The number of requests for a **variation** to determined admission arrangements for maintained schools returned to the low level of 2012/13. Several involved changes to take into account the proposals to create extra school places. The OSA has again received enquiries about how to seek a variation to determined arrangements for academy schools and been asked why the process is different from that for maintained schools.
7. The number of appeals against a local authority’s notice of intention to **direct** a maintained school to admit a child has remained low. Yet again the correct procedure required by the Act had not been followed in the majority of cases and thus they were outside the jurisdiction of the adjudicator. The different process for maintained schools and academies seems to lead to this mistake. If a local authority has been unable to persuade an academy school to admit a child using its fair access protocol it can then go to the Education Funding Agency (EFA) and seek a direction on behalf of the Secretary of State, whereas before being able to make a direction itself to a maintained school the longer process set out in the Act must be followed. The EFA requested advice from the adjudicator for one referral it received. The result of the continuing misunderstandings about the process for making a direction are likely to mean a child is out of school for longer than absolutely necessary.
8. The consideration of **statutory proposals** referred to the adjudicator continued to form a small part of our work. The range of cases was much as in previous years, for example, appeals against a decision to close certain types of school, and proposals to form a community primary school from separate community infant and junior schools.
9. The number of **land transfer** cases concerning maintained schools remained very small. They are varied, but a common feature has been that schools and their legal representatives have not considered carefully enough the precise terms set out in legislation to be met for land to transfer to the school. The land must

immediately before the change of status, the implementation date, have been held or used by the local authority for the purposes of the community school.

Sometimes a site visit was needed to check on the matters raised by the parties, but simply having a desire to have land, and the buildings on that land, is not a sufficient reason to have land transferred.

10. The Regulations and Code require every local authority in England to prepare a **local authority report** and send it to the Adjudicator by 30 June, as well as also publishing it locally. All 152 local authorities sent their report to the OSA, not all on time, but fewer reminders were needed before having the full set. The Code sets requirements about what must be included and makes provision for local authorities to raise issues of their own. As previously a template was provided for the report that included questions on matters about which a view from across the country may prove useful to those concerned with admissions to schools.
11. The application of fair access protocol procedures mostly works effectively in placing children who do not have a school place in the school that best meets their needs. Most schools work well with their local authority in ensuring a place is available, but a small minority of schools do not co-operate fully and delay or strongly resist the admission of a child. Very few instances of a child needing a place have ended with a direction to a school to admit.
12. On matters relating to the normal admissions round there have been few changes since last year. The new provision that priority must be given to all children who have been adopted and were previously in care has been welcomed and has removed the differences in understanding of a “previously looked after child”. Some local authorities have restated their concerns about the placement of children in care in a different local authority area without proper discussion with the receiving authority. Particular mention has been made of the placement of unaccompanied asylum-seeking children. Local authorities have also reiterated their concern about the number of late applications and repeated their request for a central campaign to publicise application dates, especially the closing date for applications for a primary school place.
13. The arrangements for in-year admissions vary depending on whether the local authority continues either to co-ordinate all admissions in its area or only some. Concerns have been reported about some schools that are their own admission authority which require parents to apply directly to them as they have not provided information to the local authority as required about places available and places offered with the consequence that some children have been out of school for an undue length of time.
14. As adjudicators often have difficulty in locating the admission arrangements for schools that are their own admission authority on the school’s website, data was collected this year about the extent to which these schools provided a copy of their

arrangements to the local authority by the date specified in the Code: 20 per cent failed to do so. Failing to publish arrangements and not sending them to the local authority hinder the checking of the arrangements for compliance with the Code by the local authority and, if necessary, enabling it to meet its duty to object. Failure to publish also limits the ability of parents and others to object before the deadline for objections.

15. Data was again collected about the extent of fraudulent applications. Just over half of local authorities reported concerns and a similar proportion reported that offers of a place had been withdrawn. Similarly, data was collected on the number of requests for children to delay their admission to school such that the child would join the Reception Year when of chronological age for Year 1. More requests have been received for delayed admission, but the number overall remains low.
16. The main findings this year include matters from the cases considered by adjudicators and from issues raised by local authorities. The OSA only becomes involved when there are differences of opinion and the findings are, therefore, mostly of continuing problems, but where possible in the report I have included some examples of good practice that we have seen in the course of investigating an objection to admission arrangements. I make some recommendations for the Department for Education (DfE) to consider.

**Main finding 1.** There has been some progress in complying with the Code on consultation about and determination and publication of admission arrangements, but too many schools that are their own admission authority do not comply fully with what are relatively modest requirements.

**Recommendation.** Communications from the DfE to schools, local authorities, academy trusts and religious bodies could usefully include reminders about the dates by which consultation, determination and publication of admission arrangements must be completed. Schools that convert to become academies and new schools need to have their attention drawn to their responsibilities as an admission authority.

**Main finding 2.** The arrangements for admission to the sixth form still frequently contravene the Code. There continue to be misunderstandings about the general requirements that apply to admissions to the sixth form.

**Recommendation.** The DfE might consider whether the entire Code should apply to admissions to the sixth form or there should be some flexibility or some other process as used by other providers of education post-16 that would be more appropriate, but would not disadvantage students seeking a place in a school sixth form.

**Main finding 3.** The admission arrangements for many schools that are their own admission authority are unnecessarily complex and lack transparency, especially those with numerous subcategories within individual oversubscription criteria. Such arrangements are difficult to understand and limit parents' ability to assess the chance of their child being offered a place.

**Recommendation.** The DfE should consider providing examples of admission arrangements and setting out some general definitions that will apply for all admission authorities to avoid every admission authority having to include information that could more helpfully be standard for all schools and provide clarity for parents. Examples include specifying that: the final tie-breaker will be random allocation if two or more applicants have equal priority for the final place available; and the waiting list will be maintained until 31 December and how it will be applied, which would avoid asking every admission authority to set out such details.

**Main finding 4.** The guidance provided for schools designated as having a religious character by the body or person representing the religion or religious denomination is of variable availability and quality. Some guidance is clear, up to date and takes full account of the Code, but much is not.

**Recommendation.** The DfE should consider providing guidance about or specifying what is expected in guidance from the relevant person or body for schools that can give priority for admission on grounds of faith.

**Main finding 5.** The Code provides for any person or body to make an objection. Local authorities and dioceses have acted responsibly in objecting to the arrangements for some schools in their areas. Although there are some matters on which an objection cannot be made, there have been instances of pressure groups and individuals making use of the provision to object when it appears to be more about trying to influence a policy matter than concern about the arrangements of a school for which parents might legitimately be considering applying for a place for their child.

**Recommendation.** The DfE may wish to reconsider who can make an objection to the arrangements for a particular school, possibly limiting it to those with proper standing for making the objection.

**Main finding 6.** The reports for local authorities raise some important matters, for example, concerning the provision of a school place for looked after children outside their home area; the problems created by late applications; and concerns about the in-year admissions process.

**Recommendation.** Consideration should be given by the DfE to making greater use of the information provided by local authorities in their reports to assist in making further improvements to the admissions process.

## Background

17. The OSA was formed in 1999 by virtue of section 25 of the School Standards and Framework Act 1998 which gives the Secretary of State the power to appoint “*persons to act as adjudicators*”. It has a remit across the whole of England.
18. Adjudicators resolve differences over the interpretation and application of legislation and guidance on admissions and on statutory proposals concerning school organisation. The adjudicators have five main functions.

In relation to all state-funded schools, adjudicators:

- rule on objections to and referrals about determined school admission arrangements;

and in relation to maintained schools, adjudicators:

- decide on requests to vary determined admission arrangements;
- determine appeals from admission authorities against the intention of the local authority to direct the admission of a particular pupil;
- resolve disputes relating to school organisation proposals; and
- resolve disputes on the transfer and disposal of non-playing field land and assets.

19. The Chief Schools Adjudicator can be asked by the Secretary of State for Education to provide advice and undertake other relevant tasks as appropriate. The Secretary of State also has the power to refer to the Adjudicator admission arrangements that do not or may not conform with the requirements relating to admission arrangements.
20. At 31 August 2015 there were 12 adjudicators, including the Chief Adjudicator. Adjudicators are appointed for their knowledge of the school system and their ability to act impartially, independently and objectively. Their role is to look afresh at all cases referred to them and to 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. Although there is no legal requirement for adjudicators to hold meetings with the interested parties they may do so if they consider it would be helpful to them as they investigate a case.
21. Adjudicators are independent of the DfE and from each other. They usually work alone in considering a referral unless the Chief Adjudicator assigns a particular

case or cases to a panel of two or more adjudicators, in which circumstances the panel will consider the case(s) together. All adjudicators, including the Chief Adjudicator, are part-time, work from home and take adjudications on a 'call-off' basis. All may therefore undertake other work at times when they are not working for the OSA provided it is compatible with their role as an adjudicator.

Adjudicators do not normally take cases in local authority areas where they have been employed by that authority or worked in a substantial capacity in the recent past, or where they currently live or have previously worked closely with individuals involved in a case or for any other reason if they consider that their objectivity might be, or perceived to be, compromised.

22. Determinations are legally binding. Decisions, once published, cannot be challenged other than through the Courts. They are checked before publication by the Chief Adjudicator and, where appropriate, by lawyers. Adjudicators must consider each case against the current legislation and for admissions matters must also consider each case against the Code. They cannot be bound by similar, previous cases and determinations as they are required to take the specific features and context of each new case into account as well as to apply the relevant legal provisions.

## Review of the 2014 report's main findings

23. The 2014 Annual Report concluded with five main findings and action required. These main findings are shown below together with the progress that has been made.

24. **Main finding 1** - Too many admission authorities of schools that are their own admission authority do not comply fully with the Code in respect of consultation about, determination of, and publication of their admission arrangements. Paragraphs 1.42 to 1.49 of the Code set out very clearly what an admission authority must do for itself and also do to enable its local authority to meet the requirement set for it in respect of publication of admission arrangements.

Adjudicators have again found that not all schools that are their own admission authority have met the requirements for consultation, determination and publication of their admission arrangements. Objections have often resulted from a lack of consultation with parents and failure to publish the determined arrangements as required by the Code. Some progress has been made such that while investigating an objection adjudicators have found examples of thorough consultation, and arrangements published and easily found on the admission authority's website. Although some progress has been made, there is still more to be done.

25. **Main finding 2** – Admission arrangements for admission to the sixth form are frequently found to contravene the Code. They are, for example, difficult to find, lack an admission number, do not include oversubscription criteria and have application forms that request information prohibited by the Code.

It remains rare to see a set of arrangements for admission to a sixth form that meet both the general requirements of the Code and those specific to the sixth form. Some schools have responded quickly and positively to an objection by making the necessary amendments.

26. **Main finding 3** – Schools that are their own admission authority often have arrangements that lack the required information and request prohibited information in their supplementary information forms. They do not meet their responsibility of having arrangements that comply fully with the Code.

We continue to see arrangements that do not include all the information specified in the Code. We also see too many supplementary information forms for schools with a religious character that do not comply with the Code, in particular because they ask for information that is prohibited as it is not required to apply the oversubscription criteria.

27. **Main finding 4** – Admission arrangements for too many schools that are their own admission authority are unnecessarily complex. The arrangements appear to be more likely to enable the school to choose which children to admit rather than simply having oversubscription criteria as required by paragraph 1.8 of the Code that are reasonable, clear, objective and procedurally fair.

Some progress has been made, but there are still arrangements that fall far short of the requirements concerning oversubscription criteria.

28. **Main finding 5** - The practice of some primary schools of giving priority for admission to the Reception Year to children who have attended particular nursery provision has again been found to be unfair to other local children, constrain parents' preferences for child care and pre-school provision and not comply with the general requirements of the Code.

Far fewer objections have been received this year about priority for attending named nursery provision. There was evidence that where a local authority had brought the matter to the attention of a school, usually the arrangements were amended without recourse to having to make an objection to the OSA.

## Review of the year 2014/15

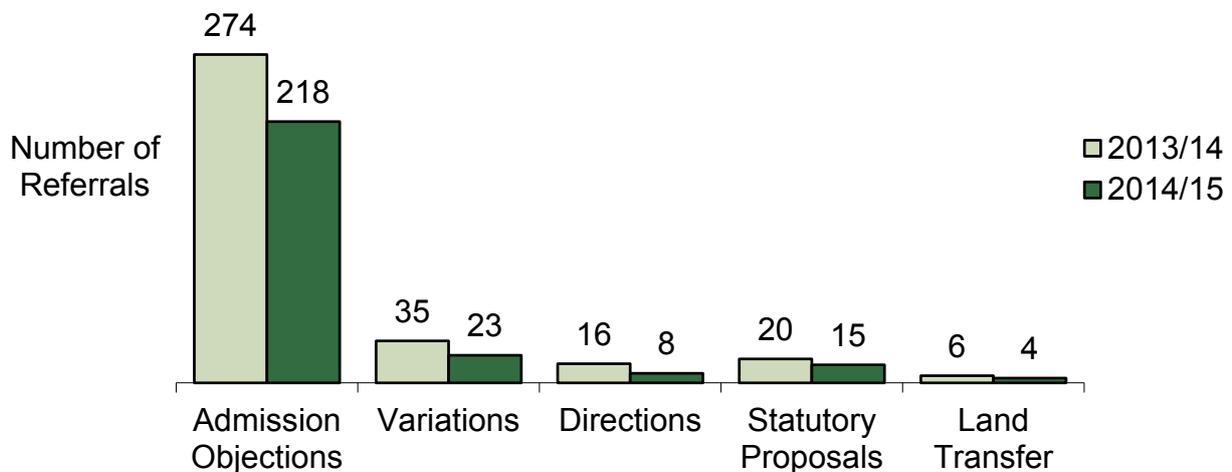
29. The workload was less uneven across the year than in recent years. There were more cases in the autumn and early winter and then after a brief lull the number rose steadily with a rush of new cases in the last week of June resulting in a high number over the summer months. The similarly high number of cases lodged in the last week of June in 2014 had resulted in many being carried forward into the new school year and the same pattern has been repeated this year. Progress on the investigation of objections to admission arrangements was slowed by a number of schools saying they would not respond until the new term in September. The revised Code that came into force on 19 December 2014 has brought forward to 15 May from 30 June the date by which an objection can be lodged in 2016. This should enable adjudicators to investigate and complete more cases before schools close for the summer holiday and admission authorities to amend their arrangements before applications are made for a school place.
30. The OSA receives many enquiries that concern matters both within and outside the adjudicator's jurisdiction. Individuals often ask for advice about making an objection prior to completing the form provided on our website and schools and local authorities seek clarification about whether a matter is within the OSA's jurisdiction before requesting a variation to determined arrangements or referring a statutory proposal. We continue to receive enquiries and requests for help on matters outside our jurisdiction, for example, a child not being allocated a place at the school the parent would most prefer. Many of the enquiries should more properly be directed to the DfE or EFA and we redirect the enquirer to where they should be able to obtain the assistance they need.
31. My regular meetings with Ministers and with DfE officials from the School Organisation and Admissions Division have enabled me to raise matters of concern with them and comment on what is working well. We have a clear demarcation line in order to maintain the independence and impartiality of adjudicators as they go about their work. I have met with groups that have a role to play in admissions and have also contributed to conferences. The aim of making a contribution to meetings and conferences is to assist admission authorities to formulate and determine lawful arrangements, and thus to reduce the number of sets of admission arrangements that are found not to conform with the Code.
32. Our team of 12 adjudicators, both new and long-serving, has worked steadily to complete the range of cases received by the OSA. The large majority of cases concerned admission arrangements, but for maintained schools statutory proposals, land transfer matters, variations to admission arrangements and the direction to a school to admit a child have featured from time to time. The qualifications and backgrounds of all adjudicators are available from the OSA.

33. Adjudicators, including the Chief Adjudicator, are part-time and are paid only for the time actually spent on cases and related work. Fee rates have remained the same since 2007. Adjudicators are supported by 6.5 full-time equivalent administrative staff based in the DfE's Darlington office. *Appendix 2* shows the OSA's costs. The increase in costs in the financial year 2014-2015 is attributable to the legal costs associated with a claim for judicial review brought by one school to an adjudicator's determination and determining the large number of cases lodged by one pressure group using objections to admission arrangements as a means to further its aims.
34. The secretariat of the OSA moved to a new location in Darlington in February 2015. They achieved the relocation with a minimum of disruption enabling adjudicators to keep working uninterrupted. The administrative staff have carried the workload without additional assistance over the summer months save for an increase in hours worked by some part-time colleagues who will take time off in lieu later in the school year and in the current financial year. The close knit team plays an invaluable role as the link between the adjudicators and those who refer cases to the OSA. Their understanding of the work of the OSA and the efficient way in which they do their work are both greatly appreciated.
35. Once again the OSA has made use of support on legal matters on a 'call-off' basis from lawyers of the Government Legal Department (GLD), formerly the Treasury Solicitor's Department (TSol). We benefitted from the advice of staff who had a good understanding of the legislative framework within which the OSA operates and were sorry to see the two designated members of GLD move to new assignments. We began immediately to work with new staff as we dealt with a judicial review claim. The judgment after the hearing resulted in a matter being remitted back to an adjudicator and subsequently a determination was published on that matter within the timescale set by the Court. The determination on the remitted matter, as ordered by the Court, stands and has not been subject to further challenge. Having gained leave to appeal on a different issue the appellant has now withdrawn the appeal. We also had one claim pursuant to the pre-action protocol which did not proceed further.
36. I have been surprised and concerned by the increase this year in the tendency of schools that are their own admission authority, that is academy, voluntary aided and foundation schools, to employ lawyers when they receive an objection to their admission arrangements. Schools should be able to construct lawful arrangements without recourse to legal advice. While occasionally the lawyer has been found to offer sound advice to the school and admission arrangements have been amended promptly, this has not been so in other cases. On land transfer matters schools have employed lawyers despite the relevant regulations being very clear on the terms to be met for land to transfer to the school on its change from community to foundation status.

37. We received nine requests for information under the Freedom of Information Act. Even when the request relates to matters for which the OSA has no role, for example, how many academies/free schools had requested expansions from the OSA, we still have to respond. Requests often require personal information to be redacted before a reply can be sent, and some ask for a mix of publicly available information and material that the requestor thinks may be held by the OSA. They were responded to within the specified timescales, but the work required to respond consumed a significant amount of the secretariat's time. We also received four complaints concerning the handling of a case. All have been closed and in response to one we are considering ways of modifying our procedure.
38. On completion of a case the parties are invited to provide feedback using the OSA's feedback form. We invite recipients to assess aspects of the process such as our: openness; accessibility; impartiality; fairness; and reasonableness, as excellent, good, adequate or poor; and provide space for free text against, *"Please tell us what we did best"* and *"What could we have done better?"* The response rate from the well over 500 forms issued was low with 46 returned. A few parties to a case sent an email message in which they recorded their thanks for the way the case was handled rather than completing the form. Given the nature of our work in resolving a dispute it has been gratifying to receive positive comments even when the people responding did not have the decision they had hoped for. Over four fifths of the respondents rated the process as good or excellent on seven of the nine aspects assessed. On timeliness we were rated a little less favourably at seven out of ten saying the process was excellent or good. On what we did best the comments referred to being kept well informed; the process was really well laid out; and a prompt and professional service. The few critical comments referred to knowing the timescale within which a judgment would be made and providing an early indication if a matter included as part of an objection was not within the adjudicator's jurisdiction. We are considering ways of responding to the concern about the timeliness of decisions and informing the parties if an aspect of an objection is out of jurisdiction in order to reduce even further the very low level of dissatisfaction.
39. Overall we dealt with 268 new cases this year compared with 351 last year. With just over 20,000 state-funded schools spread across 152 local authorities in England only a very small proportion of these schools have been part of cases referred to the OSA.
40. Local authorities must submit a report to the adjudicator by 30 June each year. The report includes the number of types of schools in their area which showed that the local authority was the admission authority for 8,835 community and 2,224 voluntary controlled schools. The relevant body, the governing body or the academy trust, was the own admission authority for 9,462 schools comprising: 3,727 voluntary aided; 1,002 foundation; and 4,733 academy schools of all types.

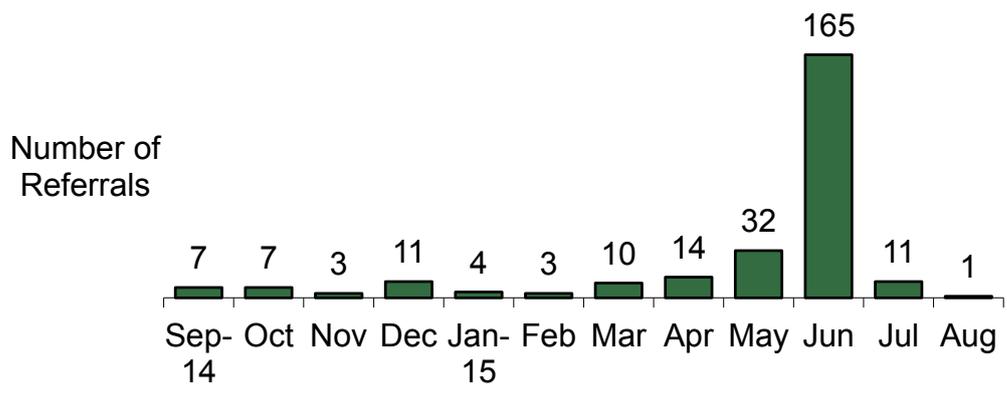
The number of academy schools increased during the year as maintained schools converted to academy status and new academy schools, that is, free schools, university technology colleges (UTC) and studio schools, opened. Many of the academies were previously foundation or voluntary aided schools and as such were already their own admission authority. There are just over 700 fewer community and voluntary controlled schools than recorded last year. Some have closed, for example where an infant and junior school closed and were replaced by a primary school thus replacing two schools with one, some may have acquired foundation status and others converted to academy status. These foundation and academy schools have become their own admission authority for the first time.

**Figure 1: Referrals by type 2013/14 and 2014/15**



41. This year 125 cases were carried over into the new reporting year of 2015/16 compared with 171 that were carried over into 2014/15. The earlier date of 30 June introduced in 2012 (compared with 31 July prior to that) by which objections to admission arrangements must be made to the OSA assisted in enabling investigations to begin before schools closed for the summer holiday, but for the second year running the high number of new objections received in the final few days of June has meant that once again many more cases have been carried forward than we would wish. The deadline of 15 May in 2016 for making an objection should help to reduce further the number of cases not resolved before the beginning of the new school year. The distribution of referrals received over the year shows how the work load varied in the last 12 months.

**Figure 2: Distribution of referrals month by month 2014/15**



## Admissions

### Objections to and referrals about admission arrangements

42. During the year adjudicators have considered 218 new and 157 cases carried forward from 2013/14 concerning objections to, and referrals about, admission arrangements. The 218 new cases reporting concerns about admission arrangements related to 155 individual admission authorities, a decrease compared with last year, but still many more than in 2013. There were 260 cases finalised compared with 161 in the previous year and 115 cases carried over into September 2015. Of the 210 determinations issued, 61 objections were upheld, 98 were partially upheld and 51 were not upheld. In 26 determinations the adjudicator did not uphold the objection and did not record any other matters that contravened the Code. In 18 cases the adjudicator upheld or partially upheld the objection, but did not report any other matters of non-compliance. This is a more positive outcome than last year with adjudicators finding fewer provisions which did not conform with the Code. Of the remaining cases, 42 were out of jurisdiction of which 14 concerned one academy for which parents wanted to object to changes that were said to be being brought in due to a request by the academy to the EFA for a variation. Eight objections were withdrawn.

**Table 1 - Objections to and referrals about admission arrangements by year and outcome**

	2014/15	2013/14
Number of cases considered	375	318
Number of new cases	218	274
Cases carried forward from previous year	157	44
Number of different admission authorities	155	204
Cases finalised	260	161
Number of objections: upheld	61	86
Number of objections: partially upheld	98	13
Number of objections: not upheld	51	23
Cases withdrawn	8	9
Cases out of jurisdiction	42	30
Cases carried forward into following year	115	157

43. Of the 218 new admissions cases concerning 155 different schools, 32 concerned the admission arrangements for 25 community and voluntary controlled schools,

42 for 39 different voluntary aided schools, seven for five different foundation schools and 137 for 86 different academy schools, including free schools.

44. The pattern from previous years continued with parents being the single largest group of objectors accounting for about half of all objections. The remainder came mainly from other schools, members of the public, local authorities and a very small number from appeals panels, dioceses and a parish council. Once again some referrals from parents were made as a result of their child not securing a place at the school they would most prefer. Many of the objections by parents were related to the issue of admission of children out of their normal age group.
45. A trigger for some objections has been that the objectors said they did not know that the arrangements they believed would apply had in fact been changed. They said they had not been aware of any consultation taking place. Other objectors complained that they had been unable to find a school's admission arrangements on its website. Some of those objecting close to or on 30 June said that the arrangements had not been available any earlier.
46. On **consultation**, once again some objections have resulted from the failure of the admission authority to consult properly as required by paragraphs 1.42 to 1.45 of the Code. Neither the Regulations nor the Code say how an admission authority must consult, but they do make very clear those who must be consulted. In particular, it is "*parents of children between the ages of two and eighteen resident in the relevant area*" as specified at paragraph 1.44a of the Code, that an admission authority most often is unable to demonstrate have been consulted. It is not surprising that it is these parents who make an objection.
47. As part of investigating an objection an adjudicator sometimes finds an example of particularly thorough consultation. One local authority had, for example, circulated a general notice to all potentially interested parties across the authority, exceeding those specified in the Code. Adjudicators have also seen references to circulating consultation documents to: playgroups; nurseries; health centres; the local leisure centre; the local supermarket; and the village shop. Elsewhere, good use had been made of social media to bring the consultation to the attention of parents. It is for the admission authority to decide how to consult, but it must ensure parents of children of the stated age range have the opportunity to comment. A difficulty for parents and others when there is a consultation on a proposed change to admission arrangements is to find out what precisely is the proposed change. On rare occasions in the course of considering an objection that did not relate to consultation we have seen good practice that includes an explanation and a set of arrangements with the proposed changes highlighted. This level of clarity helps to avoid objections to the adjudicator.
48. Some own admission authority schools had contracted with their local authority to consult on their arrangements on their behalf, but the admission authority remains

responsible for ensuring that the requirements of the Code are met. Too often own admission authority schools seemed to think that putting their proposed arrangements on the school's website was sufficient and they made no attempt to inform the relevant parties that a consultation was taking place. Even if the arrangements were seen on the website it was not apparent what aspect of the arrangements was being proposed for a change. What appeared at first sight to be an example of good practice by one admission authority turned out not to be so when examined further. The admission authority had produced a leaflet about its consultation citing clearly one matter for which a change was proposed and stating that it was not intending to make other changes. The reality was that it made several other changes to the arrangements, including the oversubscription criteria, which not surprisingly led to a number of objections.

49. A common shortcoming by admission authorities of secondary schools is to notify primary schools about their consultation and assume these schools will in turn inform the parents of children attending their school. Unless a primary school has been asked to pass information to its parents and agrees to do so the secondary school is not meeting the requirement to consult the parents of children in the primary age range, and is certainly not consulting those from age two upwards.
50. Adjudicators are also concerned when the responses to a consultation do not appear to have been given due consideration. Those consulted do not always understand that it is not simply the number of responses in favour versus the number against that will decide the outcome. Equally, the school needs to show that it has considered the responses and then having considered them decided whether to change the arrangements or not, and be clear about the reasons for its decision. The new timetable for consultation introduced in December 2014 now applies, that is for a minimum of six weeks between 1 October and 31 January. As noted last year, the final sentence in paragraph 1.45 of the Code says, "*Failure to consult effectively may be grounds for subsequent complaints and appeals*" and this has again proved all too true: it is to be hoped that this will not be repeated in 2016.
51. Whether or not an admission authority consults on its arrangements because it considers changing them or it has not done so in any of the last six years, it must **determine**, that is, formally agree, its arrangements every year. Schools that are their own admission authority need to build into their meetings' calendar for the year a reminder to consider and determine their arrangements and to minute the decision so that there is a formal record.
52. This year each admission authority had to determine its arrangements by 15 April for admissions the following year. From 2016 onwards the deadline for determining arrangements is 28 February. Those admission authorities that complied with the Code were found to have minutes of a meeting that recorded

clearly that the arrangements had been discussed in good time to allow for consultation if needed, showed that responses to consultation, if held, had been given careful consideration, and the decision taken as to what the arrangements would be was noted in the minutes.

53. Problems were found where schools, particularly primary schools, had converted to become an academy and had not complied with the requirements to determine and publish their arrangements. Some of these schools had decided to continue to use the arrangements identical to those of the local authority. This was a sensible decision as parents knew and understood those arrangements. However, if there is an objection as was common this year about the admission of children outside their normal age group, the school as its own admission authority must be able to demonstrate that it had determined its arrangements. If using the same arrangements as the local authority has for its community and voluntary controlled schools this may be thought of as a technicality, but to have lawful arrangements the academy trust for the school must, after the local authority has determined its arrangements, then decide to adopt and determine identical arrangements.
54. Another shortcoming was revealed when a school decided to consult on its arrangements and then when there were no responses regarded taking the decision to consult as having determined them. The absence of any responses did not prompt the school to consider whether it had consulted all those who should have been made aware of the proposed changes. Nor did the school think it needed to make a formal determination after consultation. It should not be difficult for an admission authority to meet the requirements for determining its arrangements.
55. The Code sets clear requirements for the **publication of admission arrangements** and overall there has been some improvement in the availability of arrangements on schools' websites, but there remain those where it is still no easy matter to find where the arrangements have been stored. Parents, adjudicators and others should be able easily to find the admission arrangements for any school. Paragraph 1.47 of the Code which says, "*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the academic year in which offers for places are made).*" Therefore from 1 May 2015 at the latest the arrangements for admission in 2016 should have been displayed by all admission authorities. When adjudicators began to investigate the objections referred to the OSA there were still instances of them being unable to find on a school's website the arrangements for 2015 which must be published for the full offer year and the arrangements that would apply for 2016.

56. The revised Code requires that in 2016 admission arrangements for admissions in 2017 are determined by 28 February and sent to the local authority as soon as possible before 15 March. A timely submission of arrangements by own admission authorities is essential to enable the local authority to publish as required by paragraph 1.49 of the Code the arrangements or the details of where the arrangements for all schools can be viewed. The governing body of a community or voluntary controlled school, for which the local authority is the admission authority, has responsibilities about what must be shown on the school's website about admissions. The requirements are set out in the School Information (England) (Amendment) Regulations 2012.
57. The most helpful websites have an "admissions" tab which leads to clearly set out arrangements for the relevant year groups. The Code at paragraph 5, footnote 5, says "*Admission arrangements means the overall procedure, practices, criteria and supplementary information used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.*" The published arrangements must therefore be the full arrangements, not just the oversubscription criteria, and must include any supplementary information form if one is used and any other form that without its being completed a child cannot be considered for priority for a place at that school. There continue to be some admission authorities that believe they can decide the ranking of applications using information that has not been collected in an open and transparent way. If a document or an action is necessary for a child to be considered for priority against the oversubscription criteria, most usually against faith-based criteria, then that document or action is part of the arrangements, must comply fully with the Code and must be published as part of the admission arrangements.
58. This year, although adjudicators have found a higher level of compliance with the requirement to publish admission arrangements, there have been several instances when they have found more than one version of the arrangements on a website and as they were not labelled it was unclear which were the determined arrangements for 2016 admissions. Also, where a hyperlink is provided to a set of arrangements the link has, on occasion, been found to go to something quite different, or to out of date arrangements, or to a message saying the page is no longer available.
59. The position remains that although there has been some progress too many schools, both maintained and academy schools, that are their own admission authority, are failing to comply with the duties placed on them about consulting on, determining and publishing their admission arrangements. Parents must be able to see the school's arrangements and, if they think it necessary, object because the arrangements appear not to comply with admissions law and the Code, and be able to do so on time. Schools that are their own admission authority have the

freedom to decide their admission arrangements, but with that freedom comes the duty to act in accordance with admissions law and the Code.

60. There have been fewer objections, down from 26 to seven this year, to arrangements where the sole or main reason for the objection concerns priority for admission for children who attend the school's **nursery provision**. In these cases priority was given to all children attending the nursery rather than using the permission included in the revised Code to give priority to children who are eligible for the early years, pupil or service premium and attend the school's nursery class or a nursery established and run by the school. For reasons given in previous years, for example, whether the school or any associated organisation gains any financial support from parents, or the fairness of the provision, the arrangements were found to contravene the Code.
61. There were 58 objections concerning **starting school for the first time**, almost all of which related to what has become known as the "summer born issue". Making an objection to admission arrangements appears to have been one strand of the "Campaign for Flexible School Admission for Summer Born Children" often referred to as the Summer Born Campaign. The section in the Code on "*Admission of children outside their normal age group*" has been expanded in the revised Code. Paragraph 2.17 says parents may seek a place at a school outside their child's normal, that is their chronological, age group. This may mean accelerated or delayed admission to a school and admission arrangements must say how this can be requested. Paragraphs 2.17 A and B set out how an admission authority must consider and make a decision about a request for admission outside the normal age group.
62. The Code at paragraph 2.16 requires schools to make provision to admit children full-time from 1 September after their fourth birthday. Those children born between 1 September and 31 December reach compulsory school age of 5 years old at the beginning of the term after 1 January and for those born between 1 January and 31 March this is the beginning of the term after 1 April. Until a child reaches compulsory school age parents may choose to delay the admission of their child and/or their child can attend part-time. Paragraph 2.16 makes clear that it is for the parents to decide whether their child attends school prior to reaching compulsory school age and if so, whether attendance is full or part-time. Schools must make full-time provision available from the beginning of the autumn term of the school year in which the child reaches compulsory school age, the September following the child's fourth birthday. The OSA has again had queries from parents about their child's right to a full-time place. Some schools provide an induction period such that it appears schools dictate the sessions for which children can and cannot attend school, including setting requirements that contravene a parent's right to full or part-time or deferred schooling contrary to the requirements of the Code.

63. Children born between 1 April and 31 August each year must attend school, or be educated otherwise than in school, no later than the beginning of the term after their fifth birthday. For the over 250,000 children born in England during these months every year this means no later than 1 September at which point they are of the chronological age of Year 1 at primary school.
64. The objections have sometimes straddled the jurisdiction of the adjudicator in relation to whether the arrangements say how a request for admission outside normal age group can be made and the process to be followed by an admission authority when deciding whether to agree the request or not. Paragraph 2.17 requires arrangements to say how a request can be made, which can be considered by an adjudicator, and paragraphs 2.17A and 2.17B refer to the process used in making a decision which is outside the adjudicator's jurisdiction. Of the 58 objections received there were: 13 upheld; six partially upheld; 20 not upheld; 13 out of jurisdiction; two withdrawn; and four finalised in the new school year.
65. As last year I invited local authorities, if they collect such information, to include data in their annual report to the OSA on the number of requests received in their area for admission of children outside their normal age group. A summary of the responses is included in the second half of this report
66. Objections have again been received about the priority given to **siblings**. A child without a sibling already attending the school may have very little chance of being allocated a place at certain schools, and equally at some schools with no or little priority for siblings children in the same family may not be able to attend the same school. An oversubscription criterion giving siblings priority to enable them to attend the same school, if that is what their parents wish, seems instinctively to be a sensible approach, particularly at primary school. However, concerns emerge if a school is very popular and oversubscribed, or sibling priority is linked with catchment area or feeder schools or siblings attending another school that is said to be linked. Priority for siblings is liked by some families and not by others who feel disadvantaged and have cause to object. The combination of catchment area and priority for siblings has been the subject of objections once again. Some admission authorities give priority for siblings from within the catchment area, then other children in the catchment area, then siblings outside the catchment, and then other out of catchment children. The sibling/in catchment priority applies only if the family still lives inside the catchment area. If sibling and distance taken together are needed to give priority, the arrangements may require that the family continues to live at the same address or nearer to the school in order to retain sibling priority. This is to avoid people moving close to a school to obtain a place for the first child and then moving further away and obtaining a place on sibling priority thereby depriving children who live near the school of being allocated a place.

67. An issue in recent years and again referred to this year is the position of a sibling when the elder child was not allocated a place at the catchment area school and the younger child then does not have priority to join his/her sibling at the out of catchment school. Some local authorities and own admission authorities assign an acquired sibling status to such children to enable, if the family wishes, the children to attend the same school.
68. The fairness of priority for siblings has also been raised when over half the places at a school are allocated to siblings making it more difficult for only or first born children to be allocated a place. As with much that is associated with oversubscription criteria for popular schools, those who have high priority for a place like the criteria and those who do not have such high priority are more likely feel the priority is unfair and not like it. The difficulty is in deciding what the Code permits and then what is fair for the largest number of children. As local circumstances change what was once agreed to be reasonable can become seen as unreasonable. Admission authorities need to review their arrangements so that they consult on them if they have not consulted in the preceding six years or if they are considering any changes to take account of changing circumstances. Priority for siblings continues to be an emotive issue.
69. Objections have been made in relation to **catchment areas** for schools. This has sometimes been linked with distance from the school within the catchment area, priority for siblings, and the removal of a catchment area by one school when other schools retain their catchment areas. Where for many years all the children have been able to attend their catchment area school, if their parents so wish, and there was also some capacity for other children, the designation of the catchment area was unlikely to be challenged. The general increase in the number of children needing a school place, or a change in the local area such as a school becoming an academy and its own admission authority then deciding not to have a catchment area any longer, has meant that families who could be almost sure to be allocated a place at their catchment school no longer have that certainty and may have difficulty in obtaining a place elsewhere.
70. Where a school has a catchment area that adjoins others the shape of each area often takes into account the geography of the locality such that whether a child lives near the outer edge of the area or very near the school a place will still be available. On removing the catchment area and introducing straight line distance to school A, for example, children living near what was the outer edge of the catchment may be displaced by children from outside what was the catchment area and in the catchment for school B, but also near school A so having priority for two schools, leaving other children with no catchment area priority and at a distance from all other schools which limits where they may be offered a place.

71. There is no requirement to have a catchment area so the lack of one or the abolition of a long-established one does not contravene the Code which sets only the terms to be met by a catchment area when one is designated by an admission authority. An adjudicator must assess whether or not the arrangements for an individual school comply with the Code. Schools should consider carefully before they decide to abolish a catchment area that has previously worked well for the families in their area.
72. One matter concerning catchment areas is the ease with which parents can find out whether they are in or out of a catchment. Some local authorities have an easy to use search facility and some own admission authority schools have clear maps that are included as part of the arrangements, but others do not and this detracts from the clarity of the arrangements. If a set of admission arrangements includes a catchment area priority then the arrangements must make clear the boundary of that area. It is not reasonable, for example, for parents to have to visit a school to see a parish map, or to have to construct their own map to find out how the location of their postcode fits with other postcodes, to be able to take this into account in assessing the chances of their child being offered a place at the school.
73. There have been more objections this year about **feeder schools** than in recent years. The Code at paragraph 1.9b prohibits taking into account any previous school attended unless it is a named feeder school. Paragraph 1.15 says, *“Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”* The Code also sets out some general requirements for all admission arrangements which adjudicators have taken into account in their consideration of objections about feeder schools.
74. The objections have included the introduction of feeder schools without proper consultation; the effect on local children gaining a place at their local school when feeder schools are introduced that are further away; and the unfairness for children whose parents applied for a Reception Year place for them at one of the newly named feeder schools, but were not allocated one, and who now seven years later have reduced priority for the secondary school and thus are doubly disadvantaged.
75. The designation “feeder school” implies that the children feed through and transfer from this school to the receiving school for the next stage in their education. There should be meaningful links between the feeder and receiving school. There should also be sufficient places at the receiving school for children attending the named feeder schools to have a realistic chance of progressing and places available for children not able to attend the feeder school or schools. Where the sum of the published admission number of the primary/junior feeder schools is

almost the same as or greater than that of the secondary school it is very likely that the naming of the feeders will be judged unfair.

76. Schools that name a type of school as feeder schools and the reason for the naming is because of that type, for example primary schools designated as having the same religious character as the secondary school or members of the same academy trust or in the same local authority, are unlikely to be acceptable as feeder schools as the relationship is based on type and not the active co-operation and links between feeder and receiving school. This does not mean, for example, that primary schools of the same faith designation as the secondary school cannot be named as feeder schools, but the choice of the particular primary schools must genuinely be because they work with the secondary school and pupils can feed from the primary schools into the secondary school allowing children who could not attend the primary schools also to have a chance of a place.
77. The concept of feeder school for infant to junior and in pyramids of first, middle and high school provides a clear pathway for children through their education. The same applies where children from clusters of primary schools progress together to a secondary school with which they all have a close working relationship that supports the children in their learning, but in all cases if a school names feeder schools it must be able to demonstrate that the selection of schools is transparent and made on reasonable grounds. The general requirements of the Code must also be met and if the school is an academy it must meet the requirement of legislation and its funding agreement to provide wholly or mainly for local children.
78. Objections to the **faith-based oversubscription criteria** that schools designated as having a religious character, often referred to as “faith schools”, may use if the school is oversubscribed have accounted for a significant part of adjudicators’ case load. During the first part of the year adjudicators spent time investigating many of the 51 objections to the admission arrangements of the secondary schools that had been lodged by a campaign group, the Fair Admissions Campaign. Objections were made only to the arrangements for faith schools and included aspects of faith-based oversubscription criteria and other general matters such as the lack of a final tie-breaker that the objector believed contravened the Code. In four cases the objection was upheld, 45 were partially upheld, one was not upheld and one was out of jurisdiction. New objections concerning faith-based oversubscription criteria and other aspects of the schools’ arrangements were received during the year from a range of objectors. We also considered objections to the arrangements of a number of schools designated as having a religious character that did not concern matters of faith, but were the same as objections made for other types of schools, for example, the admission of children outside their normal age. In many of these schools, if there were faith-based

oversubscription criteria they were clear and complied with the Code so they were not part of the objection.

79. The arrangements for a school with a religious character must comply with the Code on general matters and if they include faith-based oversubscription criteria they must comply with paragraphs 1.36 to 1.38. The Code at paragraph 1.38 says, *“Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code.”* There is an exemption to the prohibition in paragraph 1.9i), which says, *“Admission authorities **must not** prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination).”* In order for a school to be able to take account of any faith-based activity, the activity must be as laid out by the relevant religious body.
80. The availability and quality of the guidance from the relevant faith body is very variable and occasionally adjudicators have had difficulty in ascertaining the identity of who could act for the faith body or even the identity of the faith body itself. The best guidance is clear, precise and takes full account of the requirements in the Code. Such guidance often includes a specimen supplementary information form that relates to a limited, clear and reasonable faith requirement that is not open to any query about what it means. Some guidance that has been seen this year has been updated to take into account the changes made through the revised Code issued in December 2014 and provides a very helpful steer for schools. More good guidance has been seen than in previous years. However, other guidance is out of date and does not assist schools in determining Code compliant arrangements.
81. Although some matters concerning faith that adjudicators have found not to comply with the Code have been complex and seem to go far beyond what is appropriate for admission arrangements, many of the matters are much the same as in previous years. Some of the schools have faith-based oversubscription criteria with faith requirements that are clear, do not require completion of an extensive supplementary information form, or an such form at all, and parents know exactly whether their child will or will not have priority on grounds of faith. Other schools have oversubscription criteria that are extensive and set 20 or even more different levels of practice linked with catchment and/or sibling or other criteria, even though there are only enough places to allocate the children meeting the fourth or fifth level of priority. Others give priority for attending a place of worship, for example, but the frequency and length of time for which attendance is

necessary to be accorded the priority is not clear; or the practice as set out in the oversubscription criterion and the information requested in the supplementary information form are not consistent so applicants cannot know whether they meet the criterion or not. Such lack of clarity means that the arrangements fall foul of paragraph 1.37 which says, “*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*”

82. An issue for the OSA and adjudicators has been the understanding of what the Code means by a school with a religious character having to “*have regard to any guidance from the body or person representing the religion or religious denomination...*” Taking together all that the Code says about faith-based oversubscription criteria it is clear that a religious activity cannot be included unless the faith body sets it out, that it is “*as laid out ...*” but even if an activity is laid out as permissible some schools then add requirements of time or duration that the faith body has neither specified nor proscribed. There is scope for greater clarity about what is expected from the designated religious body by way of guidance and what is and is not acceptable in relation to giving some children priority over others for admission to a state-funded school, as well as greater clarity for schools about how they must act with respect to that guidance.
83. The **complexity** of some schools’ admission arrangements continues to be a matter of concern. Adjudicators have noted that the admission arrangements determined by local authorities for community and voluntary controlled schools are almost always clear and uncomplicated so it is easy for parents and others to understand how places will be allocated. The arrangements of some schools of all types that are their own admission authority are equally clear and straightforward, but frequently they are less clear and more, or even very, complicated. Some of the clearest arrangements have three or four oversubscription criteria and a suitable tie-breaker if two or more children have equal priority for the last available place. The arrangements for one large metropolitan area, seen in the course of searching for some general information, had three oversubscription criteria for both primary and secondary schools, namely, looked after and previously looked after children; siblings; distance (with priority on nearness to the school). Another such area had four oversubscription criteria as it added at criterion 2, exceptional medical/social needs. In both instances many of the academy schools in the area use the same arrangements. However, arrangements set by some own admission authority schools have so many levels of priority that often it is unclear how the arrangements could actually be applied. The complex arrangements compared with the clearest have some or all of: numerous oversubscription criteria and sometimes sub-categories within them; different categories of places; more than one catchment area; feeder schools; points with those who gain most having highest priority; banding and therefore tests to be taken; and aptitude assessment. The complex arrangements of some schools do not serve local children well.

84. The purpose of the Code is set out at paragraph 12 as being “*to ensure that all school places for maintained schools (excluding maintained special schools) and Academies are offered in an open and fair way.*” and paragraph 14 of the Code says, “*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” For popular schools that have complicated arrangements, especially if they include tests for banding purposes and/or for places allocated for aptitude and/or for some selective places by ability, the first hurdle in gaining a place is to take the test. In some areas the local authority administers a single set of testing arrangements for all the schools concerned so that children take only one set of tests. In other areas children may have to attend test centres to take different tests for different schools on more than one day.
85. The introduction of banding has been the subject of objections this year. The first requirement in order to be clear is that the arrangements need to be explicit that where banding is used neither children with a statement of SEN or EHC plan nor looked after and previously looked after children have to take the banding tests, but must be offered a place. The reason given for introducing banding is often said to be wanting to ensure the school has a comprehensive intake. What has emerged is that some schools wish to increase their intake of higher ability pupils such that children living near the school, but placed in a band with many similar children may not be allocated a place. Where for example the school has an equal number of places in each band this is unlikely to reflect the distribution of ability in either the local or national population. If places are allocated within a band using sibling and other criteria then it may be that very few applicants are allocated a place because of the band they are in, but all applicants, except children with a statement of SEN or EHC plan or are looked after or previously looked after, must take the tests. Some schools are undersubscribed with first or high preference applicants, yet they feel obliged by their funding agreement to administer banding tests at considerable cost. In one oversubscribed school over 500 children took the tests, but only 50 places were allocated by virtue of being in a band. The cost of filling these places was about £500 per child, when using random allocation to decide which of those who would like a place should be given one would be likely to have had the same overall outcome more cost effectively. Adjudicators must apply the Code when considering objections, but some of the cases involving banding that have been seen raise questions about the effects on children, its purpose and costs.
86. **Sixth form** admission arrangements are rarely the main focus of an objection, but when arrangements for Year 12 are seen in the course of investigating an objection about the arrangements for Year 7, the sixth form arrangements are frequently found to contravene the Code. The OSA often receives enquiries as to whether certain actions by a school, such as requiring a deposit for a place or setting minimum requirements in examinations at the end of Year 12 as a

condition for progressing to Year 13, are permitted. These are not lawful, but dealing with them is not within an adjudicator's jurisdiction so the complaint must be referred to the DfE.

87. The matters of non-compliance of sixth form admission arrangements continue, as in previous years, to include: the lack of a published admission number; confusion about the difference between an admission number for external students joining Year 12 and the capacity of the sixth form; arrangements not published by the date set by the Code; application forms that ask for information prohibited by the Code; and the use of oversubscription criteria that do not comply with the Code. Many schools persist in thinking that the requirements of the Code overall do not apply to admissions into the sixth form. Paragraph 2.6 of the Code does give certain permissions and says, *“Children and their parents applying for sixth form places may use the CAF, although if they are already on roll they are not required to do so in order to transfer into year 12. Admission authorities can, however, set academic entry criteria for their sixth forms, which **must** be the same for both external and internal places. School sixth form admission arrangements for external applicants must be consulted upon, determined and published in accordance with the same timetable as for admission arrangements for other entry points. As with other points of entry to schools, highest priority in oversubscription criteria for sixth form places **must** be given to looked after and previously looked after children who meet the academic entry criteria. As stated in paragraph 1.9m) above, any meetings held to discuss options and courses **must not** form part of the decision process on whether to offer a place.”*
88. As local authorities are not required to have common application forms (CAF) for admissions to Year 12 schools typically devise their own application forms. These forms cannot request information other than that needed to allocate places against oversubscription criteria if there are more applicants than places. Adjudicators have seen forms that ask for information that is not relevant for any admission, such as the ethnicity of the student, and information that may be useful or essential when a student enrolls at the school, but is not relevant for considering the application. Application forms must not ask questions about the language spoken at home; require a financial deposit for any purpose; or ask the applicant or applicant's current school to provide information or a report about their behaviour or attendance. For those Year 11 students whose schools do not have a sixth form or the school's sixth form does not offer a suitable course, students should be able to consider the admission arrangements for other schools with sixth forms and be considered for a place in accordance with the terms set out in the Code.
89. Last year adjudicators reported that local authorities rarely complied fully with the requirement to include details about admissions to sixth forms in a composite prospectus. Paragraph 14 of schedule 2 to the School Information (England)

Regulations 2008 makes clear that the determined admission arrangements for admission to a school above compulsory school age have to be provided in a composite prospectus. Local authorities were asked through the report template how they meet this requirement and the same question has been asked this year findings are given later in this report.

90. It is not surprising that on occasion schools express the view that it is unfair for them to be required to operate within the constraints of the Code when sixth form and further education colleges use whatever process they wish to decide whether or not to offer a place to a prospective student. What is in the best interests of students is a matter for the DfE to consider, but it might be timely to consider whether admission arrangements for school sixth forms should have to comply with all the requirements of the Code or if a different process would be appropriate.
91. **General matters.** I commented last year on the impact of one of the amendments to the School Standards and Framework Act 1998 by the Education Act 2011 that increased the range of people and bodies eligible to object to admission arrangements so that any person or body can object. Referrals have been made again this year that would not have been accepted prior to this legislation. Campaign groups, either directly or through individuals, and some individuals who seem to have particularly strong views about certain matters have submitted objections that appear to be more about trying to influence further changes to admissions law than having justified concerns about the compliance of arrangements for a school. Individual families who may be affected by a set of admission arrangements have a legitimate reason to challenge those arrangements if they believe they contravene the Code. Using the Code to make an objection to arrangements for a school of a particular type or any other school with which the objector has no connection in terms of seeking a place for their child in the year to which the arrangements apply, or may apply in a future year, is not good use of an adjudicator's time and public money.
92. Regulations require that the name and address of an objector are known to the adjudicator. This has meant that some objectors have requested that their name should not be made known to the admission authority or other parties. This is understandable in the case of a parent objecting to the arrangements of a local school, but I am concerned that anyone else should wish to remain anonymous. Objectors do not have to give a reason why they are making an objection, only what it is about the arrangements that they believe contravenes the Code. There would be some merit in considering who should be eligible to make an objection and whether there is a legitimate reason for agreeing the anonymity of an objector.
93. An emerging issue, but outside the OSA's remit, is concern about the forms that own admission authority schools are using for in-year applications. Some that

have been seen in the course of investigating an objection include requests for information about matters which it is difficult to understand why a school should be asking such questions. If a place is available a child seeking a place should be admitted, but at times the impression has been gained that even if the school could accommodate a child, it would be considering whether it wished to give that particular child a place.

94. Overall, we have found that some schools when contacted about an objection to their arrangements were anxious to, and did, put matters right as quickly as possible making use of the provision to vary their arrangements to comply with a mandatory provision of the Code. Others have been reluctant to change and comply with the Code. Questions asked last year remain: why do some schools decide to have complex arrangements and what is their aim? Also, when the objection to the arrangements in 75 per cent of cases was upheld or partially upheld and in some of those not upheld there were some other aspects that did not comply with the Code, how confident can we be that the arrangements for other schools not subject to an objection do not contravene the Code? The majority might be fully compliant, but we do not know.

## **Variations to determined admission arrangements of maintained schools**

95. During the year adjudicators considered 23 new requests for a variation to an admission authority's determined admission arrangements, a return to the level of two years ago. Six cases were carried forward from 2013/14 and six have been carried over into 2015/16. Of the 23 completed cases, 18 variations were approved; two were not approved; two were out of jurisdiction; and one was withdrawn. All decisions to approve or not approve a variation are published on the OSA's website.
96. Once determined for the relevant school year admission arrangements can only be varied, that is changed, in limited, specified circumstances. The Code at paragraphs 3.6 and 3.7 set out the circumstances in which an admission authority may itself vary its arrangements, for example, to comply with a mandatory requirement of the Code. An admission authority may also propose a variation if it considers there has been a major change in circumstances, but such proposals for a maintained school must be referred to the Adjudicator.
97. Requests for a variation for an academy school must be made to the EFA to decide on behalf of the Secretary of State. Decisions made by the EFA are not published. Given the enquiries received by the OSA about making a variation for academy schools, it would seem that uncertainty among schools persists about the roles of the EFA and OSA in relation to a variation to the determined admission arrangements for an academy.

98. A request for a variation remains a relatively rare event. A variation is not required if an admission authority wishes to increase its published admission number, but again this year there have been several requests for a decrease in a published admission number. This has usually been associated with a change in age range of a school where, for example, an infant school and a junior school both become primary schools with the changes in age range being agreed after the admission arrangements have been determined. While the admission number for each school is decreased, the number of places overall in the area is increased.
99. The improvement noted last year in admission authorities meeting the requirement to notify relevant bodies of proposed variations has been maintained. It has been common to find that the admission authority exceeded the requirement for notification and, wisely where time permitted, consulting on changes that it was proposing to make via a variation to its determined admission arrangements.

### **Directions to maintained schools to admit a child**

100. Under Sections 96 and 97 of the School Standards and Framework Act 1998, in certain circumstances, the admission authority for a maintained school may appeal to the Schools Adjudicator if notified by a local authority of its intention to direct the school to admit a child and the admission authority believes it has a valid reason not to do so. If a local authority considers that an academy school would be the appropriate school for a child without a school place and the academy school does not wish to admit the child, the local authority may make a request to the EFA to direct, on behalf of the Secretary of State, the academy school to admit the child.
101. During the school year 2014/15 the OSA received 14 referrals. All cases were resolved during the year. Of these cases, three were withdrawn, nine were out of jurisdiction, and in two the appeal from the school was not upheld and the local authority was given permission to direct the school to admit the child. The EFA referred one case to the OSA seeking advice, and in that case the recommendation was that the school should not be required to admit the child.
102. Directing a school to admit a child is the measure of last resort to provide a school place for that child so it is good to report that the number of cases has remained low. However, the same problems have arisen again this year resulting in a case being out of jurisdiction because the local authority had not met the terms of the Act before giving notice of its intention to direct the school to admit the child. It is not sufficient for making a direction to a maintained school to have followed the authority's fair access protocol and then move to direct without evidence of having complied with the statutory requirements. Failure to have met the terms of the Act can result in a child being out of school for longer than would otherwise have been necessary.

103. The time for making an appeal, namely, 15 consecutive days, or seven consecutive days in the case of a looked after child, seems to have been better understood this year. It remains a concern that some of the appeals amounted to little more than not wanting to admit the child rather than there being any valid reason for the appeal. Data about the total number of directions are included in the section on reports from local authorities.

## Statutory proposals

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

104. During 2014/15 the number of statutory proposals referred to the OSA fell to eight compared with 20 in 2013/14. This level is nearer that of two years ago and the number expected taking into account the changes in school organisation regulations in recent years. There were two cases carried forward from 2013/14, one was withdrawn and two were found to be outside the adjudicator's jurisdiction. Of the six decisions issued all the proposals were approved. One case has been carried forward to 2015/16.
105. The most common type of case continued to be where the adjudicator is the decision maker for proposals to discontinue community infant and junior schools and to establish a community primary school, often called amalgamations. Three such proposals were approved.
106. There was one case approved concerning a change of category from community special school to foundation special school and two proposals to discontinue a school which were approved. There was uncertainty on the part of a local authority in each of the two cases that were out of jurisdiction. The slight changes in the new regulations issued in 2013 governing the discontinuance and establishment of schools and for making a prescribed alteration to a school that had not been fully understood as there was no need to refer the matter to the adjudicator. The need to be sure whether the old or the new regulations and statutory guidance were to be applied for each case kept adjudicators as well as local authorities looking very carefully at the legislation to ensure mistakes were not made.

## Land transfers for maintained schools

107. Once again disputes about the transfer of land when a school changes category or acquires a foundation have made up a small, but time-consuming, part of the OSA's work. The Education and Inspections Act 2006 made provision for some land transfer issues to be referred to the adjudicator and since then a total of 66 cases have been received. Six cases were carried forward from 2013/14 and four new referrals were received. Eight cases were completed and two cases remained to be resolved. Some enquiries to the OSA about land issues have been resolved simply by answering questions put to us without ever setting up a case, for example, if the matter concerns the disposal of a playing field it must be referred to the DfE.
108. Although the transfer of land takes place by operation of law when a community school becomes a foundation school, if there is no agreement as to which land should transfer within six months of the change of status occurring either party may apply to the adjudicator for a direction to resolve the disagreement. What seems not to be understood by schools and their lawyers are the tight terms that apply when deciding who should have the land or property that is the subject of the dispute.
109. Three cases were ruled outside the adjudicator's jurisdiction, one long-running case was resolved when the school withdrew its claim to farming land and there were two disputes over houses that had formerly been caretakers' houses. Perhaps the most unusual case was having to decide the ownership of a piece of land that no-one wanted; not the school, the local authority or local residents. The cases can also take a long time to reach a decision as it can be difficult to obtain the necessary information from the parties. The prediction that the number of cases would remain small has been justified and there is no reason to anticipate any change in the near future. The only concern is that there have been more enquiries about just who can make certain decisions, for example when the dispute is not one at the time of change of community to foundation status, or a third party is involved. In order to be certain whether the matter is one that can be considered by the OSA a substantial amount of work has to be done to clarify just who does have jurisdiction.

## Summary of Local Authority Reports 2015

110. Section 88P of the School Standards and Framework Act 1998 requires all local authorities in England to, “... *make such reports to the adjudicator about such matters connected with relevant school admissions as may be required by the code for school admissions.*” Paragraph 3.23 of the Code stipulates that, “*Local authorities **must** produce an annual report on admissions for all the schools in their area for which they co-ordinate admissions, to be published locally and sent to the Adjudicator by **30 June** following the admissions round.*” The Code also sets out in the same paragraph what must be included as a minimum and these matters are summarised below.
111. Local authorities are invited to complete a template that covers those matters the Code specifies must be included in their reports. As previously, I have sought additional information to enable me to write on other issues I think it would be useful to include in this report to the Secretary of State for Education and I am grateful to local authority staff who have taken the trouble to provide information on these issues.
112. This year 118 local authorities, compared with 113 last year, met the requirement to submit their report on time; a further 20 reports had been submitted by mid-July and all 152 had been received by 6 August, a rather slower response overall than in the previous year. Although about the same number of reports was submitted by 30 June this year, almost one in four was delayed by up to five weeks and OSA officials were required to issue reminders, including some to local authorities where data was missing from the report. Submission of complete reports by the date specified in the Code is greatly appreciated; it is, I know, a time of the year when local authority staff are busy with admission appeals.
113. This summary of the reports is based on the evidence of what local authorities say is happening in their area. While asked to write about those matters specified by the Code and those additional issues on which I asked for comments, they are also invited to raise other concerns if they wish. Some of what local authority staff say echoes what adjudicators have found when dealing with objections about admission arrangements. Other matters continue to be raised, notably concerning appeals, about which the OSA has no first hand evidence as they are outside our remit. The OSA is simply required to summarise what local authorities report, but not to undertake exercises to gather evidence to corroborate the findings.
114. The total number of schools by type in England on which the local authorities report, and to which this summary refers, is shown in the following table.

**Table 2 - Number of schools by type**

Category of school	Number of schools for pupils up to age 11	Number of schools for pupils aged over 11	Number of all-through schools	Total number of schools
Community	8,116	612	107	8,835
Voluntary Controlled	2,193	30	1	2,224
Voluntary Aided	3,433	288	6	3,727
Foundation	683	312	7	1,002
Academy	2,526	1,859	64	4,449
Free School	102	80	20	202
UTC	n/a	27	n/a	27
Studio School	n/a	55	n/a	55
<b>Total</b>	<b>17,053</b>	<b>3,263</b>	<b>205</b>	<b>20,521</b>

## Specific groups

115. The Code requires local authorities to provide information about how admission arrangements for schools in their area serve the interests of: looked after children and previously looked after children; children with disabilities; and children with special educational needs, including any details where problems have arisen.

### Looked after children and previously looked after children

116. All local authorities once again report that, as required by the Code, looked after children and previously looked after children are given the highest priority in the oversubscription criteria for admission to schools in their area. Five local authorities feel that the interests of looked after children are less than fully served, compared with two last year, and ten again express some concerns about how well the interests of previously looked after children are met; however, none feel that the interests of either group are not satisfactorily served. As reported last year, a small number of local authorities state that some own admission authority schools still do not make explicit mention of prioritising the admission of previously looked after children in their arrangements; notes explaining the designation of these children are sometimes neither complete nor accurate. Nevertheless, most local authorities present a positive picture; several again note with appreciation the willingness of many schools to admit looked after and previously looked after children in excess of their published admission number (PAN) if the school is deemed the most suitable provision for a child by the local authority.

117. Non-statutory guidance issued by the DfE in May 2014 that priority for admission should be given to all children adopted from care who are of compulsory school age and not just those adopted from care under the 2002 Children's Act has been welcomed, in that the number of differences previously reported between local authorities' and own admission authorities' understanding of who qualifies as a previously looked after child has lessened. Many local authorities detail the considerable efforts made to ensure that all previously looked after children are identified during the admissions process. A few report instances of parents or carers not declaring the child's "previously looked after" status at the time of application, with the result that the child has to be allocated a place over PAN after the allocation date; this situation sometimes arises when the adult is reluctant to divulge a child's history. Some parents are concerned about confidentiality; a few local authorities report again that some are troubled also by other parents' queries about how a previously looked after child, unknown as such to them, has been allocated a place at a popular, oversubscribed school.
118. Many local authorities continue to praise successful placements for looked after and previously looked after children achieved through collaborative working between admission teams, social workers and others, such as health authorities. Liaison of this kind is particularly effective in ensuring that children who need a school place outside the normal admissions round are found appropriate placements as quickly as possible. Some reports, however, mention difficulties in obtaining confirmation, particularly from other local authorities, that a child was previously looked after and that s/he has a relevant adoption, child arrangements order or special guardianship order that meets the necessary legal definition. Obtaining the paperwork required is time consuming and causes delays to the admission process, increasing the length of time a potentially vulnerable child is out of school.
119. A significant issue highlighted in detail this year by one local authority and echoed by several others concerns the placement of unaccompanied asylum-seeking children in care as well as the influx of children in care from other local authorities where there are seen to be insufficient homes, carers or other therapeutic services, or where these facilities are deemed too expensive. The receiving local authorities, while content that they and their schools are seen to meet the needs of these children, are concerned that little if any advice is sought about the availability of suitable school places for such children before moving them into the area. Where the receiving authority has been identified because, for example, housing is cheap, already vulnerable children may be placed in an environment that is potentially stressful or damaging and where there may be a shortage of suitable school places.
120. As in previous years, a number of local authorities express concern that some schools designated as having a religious character give priority, as permitted by

the Code, to looked after, previously looked after and all other children of the faith before looked after and previously looked after children not of the faith. This has resulted in its being difficult, or even impossible, for a looked after or previously looked after child other than of the faith to be admitted to some popular, high achieving faith schools. This is not the whole picture, however, and a few local authorities report this year an increasing number of faith schools that give priority to all looked after and previously looked after children whether or not of the faith, sometimes following guidance from their religious body in making this inclusive provision.

121. From the vast majority of the local authority reports, it is clear that the priority for admission of looked after and previously looked after children is working as intended by the Code in a positive way and that, in general, the agencies concerned co-operate successfully to ensure the best possible outcomes for these children.

### **Children with disabilities**

122. Almost one in seven local authorities reports that the interests of children with disabilities are served only partially, although none believes provision to be unsatisfactory. Most report that as admission authorities themselves they include exceptional social, medical or physical conditions as an oversubscription criterion within their admission arrangements for community and voluntary controlled schools, many give the criterion a high priority, in some cases immediately following that for looked after and previously looked after children. At least one local authority extends the remit of this criterion to take account also of a parent's disability. Admission authorities usually require an application for priority against this criterion to be supported by evidence from a relevant professional as to why the child should be allocated a place at a particular school. Some local authorities make no such provision, stating that many children with a disability have a statement of special educational needs (SEN) or Education, Health and Care (EHC) plan and that this gives them priority in the admissions process. A similar mixed situation is reported for schools that are their own admission authority. A few local authorities that describe themselves as "traditionally low statementing" note that this might disadvantage some children in the application process, but it is not seen to be a major problem provided support services work closely together.
123. A few local authority reports suggest that children are disadvantaged by the lack of a specific oversubscription criterion that prioritises children with disabilities. A few local authorities report occasional difficulties in securing the in-year admission of such children through the fair access protocol, with schools sometimes pleading a lack of appropriate facilities, resources, or teaching expertise. Although such difficulties are usually overcome through patient negotiation, the resulting delay prevents timely access to the provision the children need. Several reports note

instances of schools telling parents that they would not be able to meet a child's needs, thus discouraging an application, or encouraging a parent to decline a place that has been offered.

124. A small number of local authorities express concern that not all parents of children with disabilities understand the need to obtain and submit evidence to support an application against a specific criterion that would provide priority for a place and that as a result it proves difficult to admit the child to the school that is most suitable after places have been offered on national offer day. In this situation, nonetheless, a child's individual circumstances, including disabilities where there is no statement of SEN or an EHC plan, can be considered by an appeal panel only after the completion of the allocation process, which may add to the anxiety already felt by the child and his or her family at the time of transfer. Difficulties arise regarding applications for Reception, when it is often not possible to offer above the published admission number (PAN) places as the child is not a permitted exception to the infant class size legislation. The problem is even greater for in-year admissions, where places in schools with specific facilities are rarely available for incoming children who may have a high level of disability, but who are awaiting an EHC assessment, but cannot be admitted without a plan that names the school.
125. As in previous years, many local authorities report ongoing programmes to adapt buildings so that more schools are made accessible to children with disabilities. As might be expected, it is also reported that funding such adaptations is increasingly difficult, especially in areas where many of the school buildings are old, cramped, or unsuitable in other ways for changes to be made in a straightforward or cost effective way.

### **Children who have special educational needs**

126. The vast majority of local authorities, more than 95 per cent, report that the interests of children who have a statement of SEN or EHC plan are met in full and none report a situation that is unsatisfactory. There are very few difficulties in ensuring that such admissions comply with statutory requirements to admit such a child, and many reports acknowledge close working between admission and SEN teams and good levels of co-operation with schools that are their own admission authorities. Many local authorities detail additional support for such children that is made available either in special schools or units or through specific support packages, including transport to and from school.
127. A small number of reports point to difficulties in gaining accurate and timely information about these children from other local authorities and refer to the lack of statutory requirements regarding communication during cross-border placements. This may cause tensions in the allocation process when some secondary schools, especially those close to the borders of several authorities, feel inundated with

unco-ordinated requests from a variety of sources for places for children with a statement of SEN or an EHC plan, with these children taking precedence in a process that is otherwise co-ordinated by the maintaining local authority. Several reports note that this situation can lead to the late admission of children over and above PAN, where possibly appeals have been held and additional children have already been admitted, putting pressure on a school's resources.

128. Local authorities often report that some own admission authority schools are still not conversant with the requirements either of their funding agreement or of legislation concerning their obligation to provide for children with a statement of SEN or an EHC plan that names the school. In such cases, as noted above regarding children with disabilities, parents may be told that the school would not be able to meet the child's needs, thus discouraging an application or encouraging a parent to decline a place already offered. In this situation, no school (other than an academy, and then only through an appeal to the Secretary of State) has the option to refuse, or to try to discourage, the admission of a child to the school. Local authorities raising this point admit that although this is a significant concern, it is hard to evidence and there is much reliance on anecdote. One local authority at least takes a firm line in stating, *"schools who refuse places are challenged about the reasonable steps they can put in place to include a child with a statement. This has resulted in all of the children with statements and EHCP's being offered a place in line with parental preference."*
129. As noted above, children who have a special need, but do not have a statement of SEN or a EHC plan, are generally admitted to a school under a social or medical criterion, or through a fair access protocol, without difficulty other than occasional delays. Compared with statemented children, a smaller proportion of local authorities, about 80 per cent, report that the interests of these children are fully met, but only one reports an unsatisfactory situation. An emerging issue in local authorities that have increasing migrant populations is children who would otherwise have statements arriving with no papers, or with papers that are not recognised in the United Kingdom, and who have to be placed in mainstream schools while the statementing process begins. This may take some time, and in the meantime the school may have few if any resources to cope with the child's needs; added to which, the families are often mobile and may come and go, in and out of the local authority's area. It is therefore difficult to meet the needs of these children, or to know how to improve the situation. That problem aside, the majority of local authorities emphasise the effective work done to ensure all children with special needs are admitted to a suitable school as quickly as possible and with the best possible preparation. A number of local authorities involve special needs, inclusion and transport teams alongside other relevant professionals, to assist in placing children swiftly in the appropriate setting.

130. A few local authorities report that they make clear in admissions literature the parameters that might apply in allocating a place in a specific school to a child with SEN, but without a statement or EHC plan. One, for example, includes a statement that applications on behalf of children with specific learning or behavioural needs are not generally upheld, as it considers that all its schools are able to support children with a wide range of individual needs. Many others state a general expectation that all schools should be able to meet most children's needs and that it is not usually thought necessary to specify a particular placement where there is no statement of SEN or EHC plan that names a school. Many report positively on excellent collaborative practice between schools.

## Co-ordination of admissions

### During the normal admissions round

131. Local authorities were again asked to assess the effectiveness of co-ordination of primary and secondary admissions for the normal admissions round, that is for entry to schools in September 2015, highlighting any particular strengths in the process and any problems. The national offer day continues to be welcomed by all. Most report that in their view the co-ordination of the process for admissions to both primary and secondary schools again worked as well, or better, than in the previous year. Only six local authorities reported primary offer day to have gone less well, and two said the same about the secondary offer day. A number of local authorities note a continuing improvement in the general efficiency of the application process, with the proportion of online applications still rising compared with paper-based applications. The use of varied means of communication such as text services to contact parents and carers has enabled processes to be dealt with more quickly than in the past, especially where any queries or problems may arise.
132. Among the reported successes of new and more efficient procedures is a significant reduction in the incidence of duplicate school offers, freeing up more spaces that can be re-offered quickly to children still in need of a place, especially in London. A number of local authorities report a further improvement in the proportion of applicants being offered their highest preference school, although this varies depending on the availability of sufficient school places in some areas. Many reports again make positive comments about improvements in the speed and quality of the exchange of information between local authorities and about the clarity that has been brought to the process when previously some applicants, for example, might have been confused by receiving multiple offers at different times from different authorities. Nevertheless, many concerns are still voiced regarding incompatible computer systems both within and between local authorities, which sometimes results in staff having to resort to time-consuming manual operations that should no longer be necessary. A number of reports draw attention to the

lack of consensus about the actual offer day should the set date fall at a weekend; some local authorities issue allocations on Friday and others wait until Monday, causing frustration, or stress and anxiety, to applicants.

133. The reports make numerous comments on issues of common concern regarding the application process for primary schools. Most frequently expressed is a request for the DfE to consider moving the date for national allocation day to earlier in the year; as currently set, year to year shifts in the date of the Easter holiday can complicate the allocation of places. Easter school closures cause problems for parents who wish to contact schools directly about a concern, or simply to accept an offer, but may be unable to do so because schools are not open, or families are away from home on holiday. Against this, other local authorities, especially those with large numbers of applications to process, feel that there is barely sufficient time between the closing date for primary applications of 15 January and the national offer date of 16 April to complete all necessary processes with the thoroughness required to avoid errors and the consequent upset and uncertainty to applicants, notably the need to accommodate appeals within the required timescale after initial notifications of allocations have been issued. Where there are difficulties related to the volume of applications and appeals, the problem may be compounded by the overlap with the secondary national offer day. There is more general agreement among local authorities, where any comment has been made, that the application period itself, some four and a half months from September to mid-January, is too long and that shortening this period might enable the overall timescale to be tightened with the resulting benefits to parents of more time to arrange early appeals where needed and for schools to give more time to planning and making induction arrangements for the next school year.
134. Many local authorities continue to suggest strongly that it would be helpful if the DfE were to implement a centralised advertising campaign, using a variety of media and outlets, in order to highlight to parents the closing date for applications to primary schools. They say that a brief, but intense national campaign to publicise this deadline would be valuable not only in reducing the overall number of late applications but in providing some additional support to vulnerable families which, a number of local authorities report, are responsible for a disproportionate number of delayed or incomplete applications. This might also minimise, for example, the impact of late applications from parents who are not known to their local authority and who thus miss targeted local advertising campaigns.
135. Several authorities report that schools which had only recently become their own admission authority were often in need of help in ranking applications according to their oversubscription criteria, while others note that the timing of new academy agreements with the DfE led to some such schools being confirmed after the application process had started or even after the closing date had been reached.

In spite of local authority support, a number of these schools did not ensure that admission arrangements were available to applicants in a timely manner. A difficulty highlighted by several reports is that while free schools are required to demonstrate that they have pupils who have been offered places, without signed funding agreements a local authority cannot formally offer places at schools that do not legally exist. In some local authorities, parallel application and allocation processes had to be implemented, increasing complexity and uncertainty for parents and schools alike. As many reports point out, irrespective of the school's status, it is the local authority to which applicants turn for answers when left confused by any part of the process. One report emphasises this concern in the context of recent school closures brought about, *inter alia*, by changes in status and late increases in the PAN of some schools, by noting that parents do not see a distinction between academies and any other school and so blame the local authority for any perceived difficulty such decisions may have caused.

136. Many local authorities would welcome additional statutory requirements in the process of administering applications. An agreed national deadline for completing the exchange of application data between admission authorities would facilitate the process, especially where an authority is part of a grouping such as Pan London but also has to deal separately with other neighbouring authorities. A substantial minority of reports again refer to delays caused by awaiting data from other local authorities while others feel that the lack of agreed timescales for late applications, changed preferences and new allocation rounds following the national offer day makes it difficult to help or advise parents applying across local authority borders. Local authorities have different policies regarding acceptable application addresses, including the use of rented properties, and a number of reports state that it would be helpful, and improve transparency, if central guidance were provided to regularise this situation. Several reports comment that it would be helpful to local authorities if new free schools and academies were also required to be part of the co-ordinated process in their first year of opening, which would reduce both the duplication of offers and the chances of children not receiving any offer, for example where an application had been made directly to a free school as the sole preference.
137. The increase in the number of own admission authority schools is noted by a number of reports as increasing the complexity of the admissions process, given the volume of data that is exchanged between these schools, the home local authority and other local authorities. Local authorities report that a number of own admission authority schools, especially, but not only, those which have recently become responsible for admissions, struggle to comprehend the requirements of co-ordination and that late returns and changes to ranked lists of applications cause delays and risk statutory timescales not being met. A number of reports suggest that some own admission authorities buy services from providers who do

not have sufficient capacity at peak times to meet national deadlines when processing applications.

138. Of those local authorities with UTC or studio schools, about three quarters co-ordinate arrangements on their behalf. Where there are such schools, many reports acknowledge continued improvement in the co-ordination of admissions, although some of these schools continue to admit children directly despite being part of the local authority's co-ordinated arrangements. A small number of local authorities remain concerned that neighbouring authorities accept applications from, and make offers directly to, applicants for these schools who should have been processed via their home authority. An issue raised in several reports is that the closing date for applications of 31 October is too early for many parents to think about Year 10 places for the following year, with the consequence that many – sometimes even the majority – of applications are submitted much later than this date. Other concerns are that UTCs and studio schools, like other schools that are their own admission authorities, are not always aware that they are bound by the Code and do not always determine or publish compliant admission arrangements.

### **In-year admissions**

139. From September 2013 local authorities were no longer required to co-ordinate in-year admissions. I asked authorities last year to report for how many schools, and of which type, they would continue to co-ordinate. I have repeated that request this year to compare data and to identify any emerging trends or significant changes. Last year, reports showed that 130 local authorities, or 86 per cent, were continuing the co-ordination of in-year admissions for at least some schools, and the remaining 22 would not co-ordinate for any. The comparable figures this year show a little change: 128 local authorities, or 84 per cent, are continuing the co-ordination of in-year admissions to at least some schools. The following table compares the co-ordination of in-year admissions by age and school type as reported in 2015 with the comparable figures for 2014 in brackets.

**Table 3 - Local Authority co-ordination of in-year admissions by age/school type**

	Community	VC	VA	Foundation	Academy	Free	UTC	Studio	Total
Primary (2014)	6,326 (6,347)	1,517 (1,444)	1,782 (1,769)	463 (399)	1,719 (1,212)	54 (47)	n/a (n/a)	n/a (n/a)	11,861 (11,218)
Secondary (2014)	446 (493)	20 (20)	163 (173)	165 (171)	1,067 (965)	37 (36)	12 (8)	11 (12)	1,921 (1,878)
All-through (2014)	13 (94)	0 (1)	3 (40)	5 (35)	37 (36)	14 (12)	n/a (n/a)	n/a (n/a)	72 (218)
Total (2014)	6,785 (6,934)	1,537 (1,465)	1,948 (1,982)	633 (605)	2,823 (2,213)	105 (95)	12 (8)	11 (12)	13,854 (13,314)
All schools (2014)	8,835 (9,443)	2,224 (2,341)	3,727 (3,771)	1,002 (1,029)	4,449 (3,804)	202 (158)	27 (26)	55 (30)	20,521 (20,602)

140. The table shows some small but interesting changes from last year. The proportions of community, voluntary controlled, foundation and academy schools using local authority co-ordination services for in-year admissions has increased by between four and six percentage points, while there have been decreases in the relatively small overall number of all-through schools and of free schools using local authority co-ordination. Almost 90 per cent of local authorities report that in-year admissions have worked as well or better than last year, although it is only about 15 per cent that report that the process has been better.
141. Schools that are managing their own in-year admissions must comply with the requirements in paragraph 2.22 of the Code to keep the local authority properly informed about applications and outcomes and to tell parents of their right to appeal if told that there is no place for their child. A third of local authorities lack confidence that these schools keep them updated promptly, or at all, about in-year admission requests and outcomes, and only one in five is very confident that they have a full picture. Particular concerns are around possible safeguarding issues when vulnerable families may be struggling to secure a place for a child and local authorities are not made aware of this quickly enough to limit the length of time that the child is out of school. Some schools are reported as offering places directly without informing the local authority, or only providing information after a child has started at the school. Poor, or non-existent, communication between own admission authority schools and local authorities can make it difficult for the latter to advise parents effectively of where vacancies may exist or, indeed, to identify and challenge poor or unlawful practice by own admission authority schools. One local authority analysed 25 cases brought to the attention of its admissions team where children had been out of school for longer than 4 weeks and found that 15 were as a result of schools not responding to applications as

required and not adhering to local guidance in relation to the in-year admissions process. Another commented that while in the past it had been “*particularly vocal about there being no need for local authorities*” to co-ordinate in-year admissions, this was on the premise that sufficient legal safeguards were put in place to ensure the local authority was kept well informed; it comments that the lack of a timescale in the Code for passing on information is not helpful and does not allow local authorities to maintain up to date information for parents or to ensure that schools are acting lawfully in this matter.

142. Several reports indicate that in-year admission arrangements can cause confusion and consternation among parents. With the situation that local authorities may co-ordinate in-year admission arrangements in all, some or none of the schools in their area, and that there may or may not be co-ordination in these matters between different local authorities, parents are often at a loss to know where or how they should apply for an in-year place. This, again, is recognised in many reports as a particular problem for families deemed vulnerable and those for whom English is not their first language.
143. I asked local authorities to report this year on how many schools parents might approach before obtaining an in-year place. Inevitably, where local authorities are able to provide information, much of this is anecdotal; and local authorities are not always aware of approaches made by parents to schools that do not result in an actual application. However, a sizeable minority of local authorities suggest that parents typically approach at least three or four schools, and sometimes as many as five or six, before receiving the offer of a place. What seems clear from the limited number of detailed responses to this question, however, is that there are a great many inconsistencies in the process, and in the experience of that process, for applicants. A number of local authorities are concerned that some schools are – anecdotally – adopting practices that enable them to “cherry pick” children rather than applying their published oversubscription criteria, including the unlawful practice of interviewing children before confirming the offer of a place, in both primary and secondary schools. Where a family with children of different ages moves into an area, it is frequently reported as becoming increasingly challenging for parents to find a local school with space across a range of year groups; in this situation, a family will often ask the local authority to negotiate on its behalf, but may have to go to appeal, and the entire process may be difficult for parents to navigate now that so many schools are their own admission authority.
144. A large number of reports indicate that too many children are left without school places for an undue length of time, giving rise again to concerns around safeguarding. This sometimes happens when own admission authority schools make background checks on children for whom in-year admission is sought before giving a decision. Not only is this time consuming, but the practice may be non-compliant with those parts of the Code that prohibit enquiries into a child’s

previous attendance and attitude, or the taking account of previous schools attended. Moreover, if the school has available places in the relevant year group they should be offered freely and without condition. A frequent concern raised is the unwillingness of schools to admit children partway through examination courses if the range of subjects or syllabuses differs from those offered by the school, or just before end of key stage tests in Year 6, with a few local authorities reporting that parents are sometimes strongly encouraged by schools to consider education at home for a child in this situation.

145. Data for the number of in-year places allocated in the period from 1 September 2014 to 15 June 2015 show a slight increase compared with the previous year, from 379,813 places in 2013/14 to 380,053 places this year. This figure is noticeably lower than the 392,462 children who needed in-year places in 2012/13. Given local authorities' concerns about the lack of, and the reliability of, information they receive from many schools, it is still impossible for me to say why the figures vary. The welcome continuation of a lower number this year may be because fewer children have needed a place other than at the normal time of admission; or it may be because of the concerns expressed by local authorities about own admission authority schools not informing their local authority about places that are available and admissions when they are made.
146. This section of my report may seem rather gloomy reading. However, in-year admissions are only one aspect of the admissions process, and the numbers are not increasing again after the substantial reduction recorded last year. Overall, as reported in the previous section, there is a positive picture of admissions processes and outcomes. Regarding in-year admissions too, there is good practice in those areas where sustained effort has gone into establishing and maintaining a co-operative and positive attitude between the local authority and the schools in its area, regardless of their status. Yet however small a proportion of admissions overall may be represented by in-year admissions they, by their very nature, concern children who need a school place as quickly as possible and are likely to be within a vulnerable or stressful situation of one kind or another. It is important therefore that concerns raised by local authorities are heard. While many are content with the current situation, there are at least as many that would welcome a return to the pre-September 2013 requirement, it being, as one report put it, *"in the interests of parents and children for there to be mandatory in-year co-ordination, particularly as pressure on places increases with larger cohorts."*

## Fair Access Protocol

147. The Code at paragraph 3.9 requires each local authority to have a Fair Access Protocol (the protocol) agreed with the majority of schools in its area. Paragraph 3.11 of the Code requires that all admission authorities participate in the Fair Access Protocol.

148. Local authorities were asked to assess how well the protocol has worked during the year in placing without undue delay children who need a school place, and to give the numbers of children placed using the protocol. Data from reports show the total number of children admitted to a school using the protocol, the number refused a place and the number admitted via a direction.

**Table 4 - Use of Fair Access Protocols**

	Primary	Secondary	All-through	Total
Admitted via the protocol (2014)	8,958 (8,474)	8,563 (8,824)	234 (348)	17,755 (17,646)
Refused admission (2014)	403 (235)	720 (609)	4 (13)	1,127 (857)
Admitted via a direction (2014)	13 (14)	25 (21)	0 (0)	38 (35)

149. The number of admissions of primary age children using the protocol shows some increase from the previous year's figure, but by far the greater percentage increase is in the number of primary age children refused admission. The corresponding number in 2012/13 was 86, so there is a clear upward trend emerging here. While the corresponding data for secondary schools also show increases in the number refused admission, they are far less dramatic. Although a few local authorities express concern that data are incomplete, these are nevertheless small numbers in the context of the total number of admissions. Of the 278,823 places allocated to primary age children and the 100,916 secondary age places allocated through in-year applications, just 3.2 per cent of primary aged pupils and less than 8.5 per cent of secondary aged pupils had to be found a place through the protocol; only 0.005 per cent of primary pupils and 0.02 per cent of secondary pupils were found a place through a direction to admit, proportions unchanged since last year.

150. Overall, the data suggest that protocols work effectively and this is borne out in comments in many reports. Several say that schools routinely admit children with challenging educational needs according to various rota systems, while others detail points systems or ranking indices to ensure fairness and parity when allocating children to schools. One local authority reserves two assessment places in a pupil referral unit for children awaiting placement under the protocol while information is collated and before it is decided whether a mainstream placement would be suitable, thus ensuring that the children are not out of school during this time. While reports refer, as previously, to the challenges faced by local authorities and schools in admitting pupils to years 10 and 11, several again describe successful collaboration with local colleges and alternative providers in assembling bespoke packages that enable young people to participate successfully in

education. At least two local authorities facing the challenge of large numbers of migrant children arriving in their areas have commissioned local colleges of further education to admit children who would be in key stage 4, and who speak little or no English, to provide an intensive English for speakers of other languages (ESOL) course. While the admission of children into key stage 4 poses a challenge to local authorities, overall there is a healthy picture of innovative thinking and successful joint working that results in successful placements and positive outcomes for many of these children. The involvement of a range of agencies and providers, and the identification of key workers, is a common thread in reports from those local authorities where the implementation of the protocol is seen to be effective in these situations.

151. Although most local authorities state that they have agreed the protocol with the majority of schools, a minority report difficulties with some schools either not agreeing the protocol, or agreeing it but implementing it only after considerable efforts at persuasion, if then. The most common reasons given by schools for not agreeing or implementing the protocol are perceived unfairness in the allocation of children, potential detriment to the welfare and education of other children, or lack of resources. Reluctance to admit is often reported as based on concerns about the impact the child may have on the school's performance data. Some schools in several areas are reported as advising the local authority that teaching groups are full even though year group numbers are below the PAN at the time of that cohort's entry to the school. One local authority employs an escalation procedure to resolve issues before reaching the point of direction, and reports that this has worked successfully on two occasions this year but others have had to refer to the EFA to secure directions to academy schools, which delays the child's re-entry to education. The increase in the numbers of children refused admission underlines the problems described by some local authorities in persuading schools not merely to agree the protocol but also to accept their part in making it work.
152. A small number of authorities report a breakdown in relationships between schools that, for example, leads to a school adopting the stance that it will not accept children who have attended one or more other named schools. A few reports note that staff attending panel meetings and who agree to accept a child under the protocol are later overruled by their head teacher, with the result that often lengthy negotiations have to be started. Such problems are sometimes encountered in the context of schools wishing to use paragraph 3.12 of the Code to refuse places for children with challenging behaviour and a number of local authorities say they would welcome greater definition in the Code of what is "*a particularly high proportion of children with challenging behaviour.*"
153. Four local authorities reported that they do not have a protocol agreed with the majority of their schools; one of these is an authority with only one all-through school and the other three include an Inner London borough and two northern

metropolitan borough councils. Nineteen local authorities, or about 13 per cent, had encountered some difficulties in implementing the protocol and about half that number felt the protocol had been less effective than in the previous year.

Although relatively few schools overall have refused to agree the local protocol, the distribution of these is of some interest. Data submitted indicate that a protocol has not been agreed with 285 out of 17,053 primary schools, 83 out of 3,263 secondary schools and three out of 205 all through schools. These data show that fewer than one in 60 of all primary schools and fewer than one in 40 of all secondary schools have not agreed the protocol with their local authority. However, of 155 community primary schools that are reported not to have agreed the protocol, 139 are in just four local authorities, and so a more representative picture is that, across most of the local authority areas in England, fewer than one in a hundred primary schools have not agreed the protocol.

154. Difficulties are encountered most frequently with own admission authority schools, including academies. For primary schools that are their own admission authority, the proportion of schools not agreeing the protocol has risen from just under to just over four per cent while for secondary own admission authorities the proportion has stayed at just under four per cent. These are not large numbers but the proportion of schools not agreeing protocols remains noticeably greater among academy schools in both phases, continuing the pattern noted in previous reports. I must repeat this year that, despite what some schools seem to believe, all are bound by the protocol that applies in their authority, whether they have formally agreed it or not.
155. Despite the need to repeat that requirement, I note that the majority of local authorities' reports show that overall, fair access protocols are working well as part of the arrangements for in-year admissions to schools. Many reports comment on schools that are particularly helpful in accommodating children through the protocol and on purposeful relationships that exist between the local authority and the schools within its area, irrespective of their designation.

## Admission appeals

156. The Code requires the collection of data concerning admission appeals. In my previous reports, data was incomplete because there were numerous cases still to be resolved at the time local authorities had to submit their report to me and even when they were offered the opportunity to update information about appeals during the summer, the picture still was not complete and therefore not accurate. This year the DfE will use the latest published Statistical First Release admission appeals for maintained and academy primary and secondary schools in England to meet this requirement.

157. Notwithstanding this change, and taking into account comments reported by a number of local authorities in 2014, I asked local authorities to report to me on the extent to which schools that are their own admission authority continue to use local authority services for appeals and to comment on any aspect of the appeals process that works well, or causes difficulties.
158. The overall response was that 90 per cent of local authorities provide services for appeals to at least some of the own admission authority schools in their area. In the primary sector, it is voluntary aided and academy schools that make up the majority of the numbers involved, whereas in the secondary sector academies predominate. In most cases, to a slightly greater degree in primary schools, it is the entire process that local authorities are asked to provide, with substantial numbers – around half of the schools involved in both phases – opting for legal advice or for assistance in case preparation and presentation.
159. Several reports mention difficulties caused by misunderstanding regulations and processes with own admission authority schools that manage their own appeals procedures and, especially, where there is little or no communication with the local authority in notifying the outcomes of appeals or concerning matters such as training for panel members. Lack of communication often extends to the non-publication of information about the appeals process and timescales on schools' websites as required by the School Admissions Appeals Code and, as with other issues previously mentioned, parents are frequently unsure about whether they should contact a school directly, or the local authority if they wish to lodge an appeal or simply need to seek advice about procedures.
160. One local authority mentioned inconsistencies in the sharing of application forms between authorities for the purposes of appeals panels, a recommendation removed from the most recent Appeals Code; this means that parents sometimes have to provide the information themselves, which is seen as an unnecessary burden on them. Others also commented on differing approaches and inconsistencies between neighbouring local authorities, or between own admission schools within the same or bordering areas, that create potential confusion and discontent for schools, panel members and appellants. Many authorities once more comment on the challenge, especially for own admission authority schools, in assembling impartial and skilled appeals panels.
161. A repeated concern in many reports is the high level of demand on the resources of the local authority and the time of the staff. In many areas this includes an increasing need to provide interpreter or translation services to support the appeals process. In order to manage better the various demands, one authority reports that it now uses "grouped multiple appeals" for main intake hearings where there is a number of appeals for one school and that feedback on this has been positive from all parties involved. The appeals process was far from complete when local

authorities submitted reports to me but notwithstanding the difficulties mentioned, my overwhelming impression is that local authorities are managing the appeals process diligently and with genuine concern for applicants who challenge decisions and for the best educational outcome for their children.

## Other issues

162. In response to some concerns that have emerged over recent years, some of which were reported last year, I asked local authorities to comment on six matters. I invited comments on: aspects of objections to admission arrangements; the level of concern regarding fraudulent applications for admissions; issues relating to the admission of summer born children; consideration given within the local authority, including schools that are their own admission authority, to allow for priority admission in 2016 to children eligible for the pupil, service or early years premium; the steps taken to publish a composite prospectus for admissions to sixth forms; and on whether a local admissions forum has been retained or reinstated.
163. **Objections to admission arrangements by a local authority.** Paragraph 3.2 of the Code says, “*Local authorities must refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful*”. Local authorities were asked to submit data, but not to comment, on three issues: (a) the number of sets of admission arrangements queried directly with schools that are their own admission authority because they were considered not to comply with the Code; (b) the level of confidence that all community, voluntary controlled and own admission authority admission arrangements are fully compliant with the Code; and (c) the number of schools that did not send a full copy of their determined arrangements to the local authority by 1 May 2015.

**Table 5 - Number of queries raised by local authorities with own admission authority schools**

Category of school	Number of schools for pupils up to age 11	Number of schools for pupils aged over 11	Number of all-through schools
Voluntary Aided	275	27	1
Foundation	27	30	0
Academy	157	179	6
Free School	10	17	3
UTC	n/a	2	n/a
Studio School	n/a	3	n/a
<b>Total</b>	<b>469</b>	<b>258</b>	<b>10</b>

164. Table 5 shows that local authorities queried admission arrangements with almost 8 per cent of own admission authority schools. This represents about 7 per cent of primary schools, but closer to 10 per cent in the secondary sector. Many more local authorities, 18 in number or 12 per cent of the total, declared themselves “not confident” that all community, voluntary controlled and own admission authority admission arrangements were fully compliant with the Code, compared with only a third of that number last year. Almost a half of all authorities were “confident” that arrangements were fully compliant, but fewer than 4 per cent were “very confident”. In total, 737 sets of admission arrangements were queried across 65 local authorities, showing hardly any change from last year; two thirds of these queries were raised by just ten local authorities, suggesting either that non-compliance is endemic in a small number of areas or, possibly more likely, that some local authorities devote more time than others to scrutinising arrangements. The requirement in paragraph 1.47 of the Code to send the local authority a full copy of admission arrangements, including any supplementary forms, by 1 May was not met by 1,916 own admission authority schools, a considerable increase of just over 500 last year. Of this number, as shown in Table 6, primary schools outnumbered secondary schools, three to one.

**Table 6 - Number of own admission authority schools not sending full copies of arrangements to their local authority by 1 May**

Category of school	Number of schools for pupils up to age 11	Number of schools for pupils aged over 11	Number of all-through schools
Voluntary Aided	680	40	1
Foundation	250	88	1
Academy	467	335	8
Free School	19	14	4
UTC	n/a	6	n/a
Studio School	n/a	3	n/a
<b>Total</b>	<b>1,416</b>	<b>486</b>	<b>14</b>

165. A number of large local authorities comment, understandably, on the task confronting them in checking that arrangements of so many own admission schools comply with the Code. Nevertheless, I remain concerned that adjudicators continue to find matters that ought to have been dealt with during local authorities' in-house checks. References in oversubscription criteria to feeder schools or nurseries are often non-compliant; the wording used in respect of looked after and previously looked after children is still sometimes incomplete or incorrect; there is often no final tie-breaker; and supplementary forms, including religious practice forms where required by faith schools, are often not published as part of the arrangements. Sixth form admission arrangements are too often difficult to locate; they are frequently non-compliant in matters such as the information requested on application forms, in mentioning interviews or requesting references from a previous school. If, in the view of the local authority, a set of arrangements does not comply with the Code and discussion with the school still does not lead to compliant arrangements then the local authority must lodge a formal objection with the OSA.
166. **Fraudulent applications for admissions.** I asked again if local authorities had any concern about fraudulent applications. Just over half of the authorities reported concerns, and a similar proportion had withdrawn offers. As with last year, the main concern was that fraudulent applications are made at all, rather than the scale of the problem, which remains very small in terms of reported numbers of cases. However, the data – while low in the context of the total number of places allocated – show a substantial increase in the number of offers withdrawn, up by 53 per cent from the previous year. In total, 284 offers were withdrawn, most of them (211) for primary schools; in 2014, the comparable figures were 186 places withdrawn, of which 136 were for primary schools and so the proportion has

remained much the same despite the overall increase in numbers. More than a third of the withdrawn primary offers this year were in Outer London or other local authorities in the south east. In 2014, 66 local authorities withdrew some offers of places; this year, the number was 79.

167. All local authorities describe a range of measures used to check for fraudulent applications, most drawing on cross-referencing applicants' details with other databases such as electoral rolls, council tax details and so on. Many employ spot checks of various kinds and some report using social media to identify or check on applicants suspected of supplying fraudulent information, as well as encouraging "whistle blowing", with at least one local authority having established a protocol that includes a formal referral form for use by any member of the public, anonymously if they wish. Some large authorities, particularly shire counties, again report that the numbers of applications they have to process precludes a full check of every one and that at best they use random spot checks across a sample of applications and respond mainly to accusations of malpractice from members of the public. Some of these authorities provide annual briefings for schools to help them in testing an application's veracity.
168. Appropriate legal documents are usually requested as evidence to support an applicant's recent or expected change of address. A significant minority of reports raise concerns about establishing what might reasonably be accepted as the principal or permanent residence of an applicant, especially where rented accommodation is involved; most of these local authorities state that they would welcome a definitive ruling on this issue, as advice to applicants can vary depending on the local authority in which they live, sometimes causing problems with cross-border applications. Overall, local authorities are alert to the issue of fraudulent applications and are generally confident in their ability to deal with it. The increased number of fraudulent applications reported this year may well be the result of increased vigilance that has led to more cases being investigated and more fraudulent practice uncovered than an actual increase in the submitted number of fraudulent applications.
169. **Summer-born children.** In December 2014 the DfE issued updated non-statutory guidance on the admission of summer born children. The revised Code, also issued in December 2014, refers in paragraph 2.16 to deferred entry and/or part time education for children in the year they reach compulsory school age; paragraphs 2.17, 2.17A and 2.17B refer to the admission of children outside their normal age group. I asked local authorities to report again on the data they hold in relation to requests for children to be admitted to a class outside their normal age group, the number of such requests agreed, reasons given for delaying a child's entry to reception for a full year, and for any other comments on matters relating to the admission of summer-born children. Data provide only a partial picture, as only about three quarters of local authorities hold data (although this is up from just

under a half last year); many acknowledge even so that the data are incomplete. In community and voluntary controlled schools, 310 requests were received for admission to a reception class for a child who had reached the normal age for Year 1, double the number of requests recorded in 2014. Of these, 245 were agreed; for own admission authority schools, 100 requests out of 119 were agreed. Both figures are significantly higher than in 2014, but still represent a very small proportion of the total number of admissions.

170. Reasons given for seeking to delay the admission to reception of a child for a full school year include concerns about the progress and development of children born prematurely, often with some unstatemented level of special need. Social and emotional, as well as medical factors were considered legitimate in a number of successful requests, including for example children diagnosed as being on the autistic spectrum. Among reasons considered less convincing were where children born late in the year who had been refused a place at the preferred school, but where no specific developmental justification for deferred entry was cited; wanting to remain with younger friends from pre-school; or parents facing difficult childcare arrangements. Several authorities report that a number of requests for deferral were withdrawn once parents had met with the school and relevant professionals and had a better understanding of the ability of schools to adapt and differentiate provision. Many local authorities have had to advise parents to think carefully about the long term consequences of delaying a child's admission to school, and that the legal framework does not guarantee such deferral will continue later in the child's schooling; several reports record instances of secondary schools that have a stated policy of not accepting any application from out of year cohort children.
171. Although the number of actual applications involved remains low, many local authorities report a significant increase in the level of time consuming enquiries concerning the admission of summer-born children. Many comment at length on what they see as unhelpful aspects of the DfE's guidance, in that it may seem to encourage parents to view admission out of normal age group as a right, rather than an exception that is for the admission authority to exercise in the best interests of the child. Several authorities report that they have been closely scrutinised in local media or taken to task by national pressure groups when requests have been refused. A number of reports raise further issues seen to need clarification. Examples include: in the event of agreed deferred entry for a child, whether an early years provider is then expected or required to hold that child's place for a further year, and what the effect might be on other applications to that provision; and if a request for delayed entry by a full year is agreed by the maintaining authority for a Reception place in a community school, this decision is not binding on other admission authorities and therefore preferences expressed at the point of application may be treated differently – the timing of the admission process means that permission to delay admission to Reception for a year has to be given before the outcomes of applications are known. Although data are

incomplete, and the issues mentioned are undoubtedly time consuming for local authorities, and probably stressful for applicants, the current numbers involved do not suggest there is a sizeable problem concerning the admission of summer-born children.

172. **The pupil, service and early years premium.** The 2014 Code enables all schools to give priority for admission in 2016 to children eligible for the pupil, service or early years premium. If admission authorities wish to introduce the priority they need to have consulted as required by the Code. I asked local authorities to report on whether the implementation of this permission has been considered, consulted on and implemented in any community or voluntary controlled schools, and whether any own admission authority schools had consulted the local authority on this matter. Local authorities were also invited to comment on any issues arising from this new permission and the process of implementation.
173. Fewer than one in five local authorities has considered introducing the pupil or service premium priority in the arrangements of community or voluntary controlled primary and secondary schools, and of that small number only about one in eight of local authorities has as yet consulted on the change, which has been implemented in just twelve schools in total, eight primary and four secondary. The scale of response, while still very small in terms of overall numbers, has been greater in own admission authority schools, where 55 schools have implemented the change, including 33 secondary academies.
174. Many local authorities, although broadly welcoming a permission which is seen as *“levelling the playing field for all admission authorities”*, are unsure as to how such a criterion may affect social mobility or help schools reduce educational inequalities at the point of admission. Some are concerned that introduction of a “premium” criterion might have the opposite effect to that intended, making parents feel stigmatised by the probing of their finances in relation to the school admission process. Several local authorities with high levels of deprivation and pressure on school places feel that the implementation of this criterion could disadvantage those not eligible for the premium payments. A considerable number expressed the view that the short time between the issue of the revised Code and period laid down for consultation on arrangements was not adequate to assess either the need for, or the likely impact of, such a criterion and then to carry out a meaningful consultation. Of those local authorities intending to investigate further, often through informal discussions in the first place, several comment that the criterion would not be introduced before the 2018 admissions round. The service premium, nevertheless, is of particular interest to, and has been generally welcomed by, a few local authorities in which there are large numbers of service families.

175. Rather more local authorities have considered the early years pupil premium, although only three consultations have yet taken place, with one school implementing the change. In the case of own admission authority schools, 13 have implemented a change.
176. Local authorities' comments on the early years pupil premium echo many outlined above in reference to the pupil and service premiums. A separate point raised in a number of reports, however, is the view that prioritising applicants eligible for the early years pupil premium who also attend the nursery provision of the school in question may work against other families who may be equally disadvantaged in social or financial terms but have chosen not to send their child to the school's nursery provision, possibly with positive reasons for wanting to delay their child's admission to an education setting until the start of Reception Year. The reverse of this situation concerns those local authorities which envisage greater efforts by parents to secure a place in a nursery class, thus placing too much emphasis on admission to the non-statutory part of the school, where no right of appeal exists. A number of reports emphasise that where there is pressure on primary school places, including those schools where there would be insufficient places for all eligible nursery pupils let alone any others, careful thought would be necessary before adopting a criterion that potentially leaves fewer places for local children. In many schools, the capacity for more children to be admitted to the nursery because of part-time provision could make it possible for those living some distance away, but with a nursery place, then to secure a reception place at the expense of local families. Other reports point out that sustainability issues are likely to arise in private and voluntary pre-school provision, with possible longer-term consequences in providing sufficient places to respond to fluctuating birth rates and family movement should full advantage be taken of this new permission.
177. **Composite prospectus for sixth form admissions.** Following a number of responses last year that suggested compliance was at best patchy, I again asked local authorities to report on how they meet regulations concerning the publication of a composite prospectus in relation to admissions to school sixth forms. About 60 per cent now tell me that they publish arrangements for this age group in their main prospectus, and just over 15 per cent produce a separate sixth form prospectus. The other local authorities direct applicants to individual schools' websites or to more general websites regarding post-compulsory education and training, of which sixth form arrangements form a part. One commented that *"Schools' own sixth form information was available in a glossy format and was highly complicated with the many courses they offered and the academic criteria applying for each – much too complicated to include in our limited, black and white simple booklet. This year we intend to signpost parents to schools' own websites and the new DfE sixth form information access site."* Some local authorities continue to report difficulties, such as *"the intention was to produce a separate composite prospectus but we did not receive copies of all school and academy*

*policies that needed to be included.”* Another comments that *“some schools have not included an admissions number or oversubscription criteria or have missed other key pieces of information.”* I have mentioned above that adjudicators frequently find non-compliance with the Code in sixth form arrangements; responses to my question suggest that too many local authorities are still insufficiently active in either checking sixth form arrangements or in meeting requirements for publishing them; a few continue to describe omissions as *“an oversight”* despite attention having been drawn last year to shortcomings in meeting these requirements.

178. **Admission forum.** The Code no longer requires local authorities to have an admission forum, but many continue to retain them, although the proportion doing so has decreased from 43 per cent last year to 37 per cent this year. While three local authorities have re-instated a forum, more have dispensed with one. In those local authorities that have a forum, there remains considerable variety in their functions and the frequency of meetings, which range from twice termly to annually. Membership typically includes head teachers, governors, local councillors, community representatives, faith groups, parents, early years providers and sometimes members of other local authority teams. The forums that meet most frequently are those that have had their remit extended beyond scrutinising and advising on compliance in individual schools’ admission arrangements to, for example: *“offering advice, challenge and scrutiny on how well the interests of specific and general groups in the local area are served in relation to matters concerning school organisation and admissions issues”*; reviewing guidance to parents; advising own admission authority schools; promoting agreement on arrangements for safeguarding vulnerable children; and sometimes scrutinising school organisation plans. Local authorities that have retained a forum are unanimous in valuing it as a vital mechanism in securing, disseminating and supporting common approaches to, and key information about, admission matters.

## Other issues - from local authorities

179. The Code makes provision for local authorities to comment on any issues that they wish to raise not already covered in the report. This year, relatively few additional matters were raised, with many reports taking the opportunity instead to reinforce responses to previous sections summarised above. Many local authorities, for example, detail extensive concerns regarding their ability to check compliance in the arrangements of large numbers of own admission authority schools, coupled with an awareness that many of these schools do not appear to know about, or to understand, their responsibilities regarding all aspects of admission arrangements, including the requirements for consultation, publication and the appeals process.
180. **In-year admissions.** Many respondents reiterate concerns about their inability to maintain an accurate overview of in-year admissions, citing in this respect both the

processes and the outcomes. As reported last year, a significant number of local authorities would welcome a return to them of the responsibility for co-ordinating in-year admissions, not least to address concerns such as the difficulties of placing children in key stage 4, and providing for immigrant children with little or no English; these children can disappear from sight, and be out of school for long periods, if communication between the local authority and own admission schools is not good. Furthermore, some own admission authorities do not comply with the Code by taking account of children's previous behaviour, attendance or attainment and occasionally in refusing to admit without making clear an applicant's statutory right of appeal.

181. **Application issues.** A further concern, repeated again from last year and often expressed strongly elsewhere in the report, is the problem encountered by many local authorities in making all parents aware of the need and timescale for applications for Reception places. There are large numbers of late applications in many areas, with a consequent overloading of the appeals process. Last year's plea for a central campaign to publicise application dates is once again urged strongly in many reports. A related issue is the length of the primary application period, regarded as too long by a number of local authorities, and the timing of the national offer day, which often clashes with schools' Easter holidays. If the offer day falls at a weekend or on a bank holiday, local authorities would welcome further guidance as to when offers should be made known. A significant number of local authorities would welcome a centralised ruling on what is defined acceptable as an applicant's address.
182. **School places.** Also repeated from last year are concerns about the provision of sufficient school places. The increase in the number of pupils is now beginning to affect the provision of secondary school places in some areas, and many local authorities report an appreciable rise in the demand for SEN support across all age groups. Difficulties in providing places are exacerbated in a number of areas by the effects of changes in the age range admitted by some schools, and changes to PANs; several authorities note difficulties caused to neighbouring schools in particular, and to the co-ordination of admissions generally, when own admission authority schools decide to admit above PAN, or to increase their PAN as permitted by the Code, without apparent regard to consequent effects elsewhere.
183. **The pupil, service and early years premium.** Other concerns include repeated disquiet concerning the possible effects of implementing oversubscription criteria that prioritise children in receipt of one of the premium payments, especially the early years pupil premium. This, together with increasing levels of enquiry about admission issues concerning summer-born children, is seen by many local authorities as potentially problematic both for the provision of places in nurseries and reception classes, and in the fair allocation of places, especially to those families not in receipt of a premium payment and/or those who choose not to enrol

a child for pre-school education. A number of local authorities report their awareness that, with increasing numbers of schools looking to extend their age range to include two-year-olds, parents assume they will automatically be entitled to a Reception class place.

184. **The Code.** Some of the concerns raised in this summary are seen by a number of local authorities as an inevitable consequence of what several describe as the “slim” Code. One comment contends that the Code *“is silent on many aspects which makes compliance and transparency more difficult and more importantly leaves us open to challenge and possible litigation.”* Several local authorities, for example, point to potential difficulties in reconciling references in the Code to children with challenging behaviour, citing statements in paragraphs 1.6, 1.9g) and 3.12 that may not sit comfortably together, causing difficulties for local authorities if trying to negotiate admissions with schools, and confusion – and sometimes distress – for parents.

## Appendix 1 - Case details 2014/15 and 2013/14

Objections to admission arrangements	2014/15	2013/14
Total cases considered	375*	318*
Decisions issued: upheld	61	86
Decisions issued: part upheld	98	13
Decisions issued: not upheld	51	23
Decisions outstanding	115	157
Out of Jurisdiction	42	30
Withdrawn	8	9

\* 218 new referrals and 157 decisions outstanding from 2013/14

\*\* 274 new referrals and 44 decisions outstanding from 2012/13

Variations to admission arrangements	2014/15	2013/14
Total cases considered	29*	39*
Decisions issued: approved	18	24
Decisions issued: part approved/modified	0	2
Decisions issued: rejected	2	0
Decisions outstanding	6	6
Out of Jurisdiction	2	6
Withdrawn	1	1

\* 23 new referrals and 6 decisions outstanding from 2013/14

\*\* 35 new referrals and 4 decisions outstanding from 2012/13

<b>Directions of pupils to a school</b>	<b>2014/15</b>	<b>2013/14</b>
Total cases considered	15*	16*
Decisions issued: upheld	1	2
Decisions issued: not upheld	2	6
Decisions outstanding	0	0
Out of Jurisdiction	9	7
Withdrawn	3	1

*\* 15 new referrals and 0 decisions outstanding from 2013/14*

*\*\* 16 new referrals and 0 decisions outstanding from 2012/13*

<b>Statutory Proposals</b>	<b>2014/15</b>	<b>2013/14</b>
Total cases considered	10*	21*
Decisions issued: approved	6	15
Decisions issued part approved/modified	0	1
Decisions issued: rejected	0	2
Decisions outstanding	1	2
Withdrawn	1	1
Out of Jurisdiction	2	0

*\* 8 new referrals and 1 decision outstanding from 2013/14*

*\*\* 20 new referrals and 1 decision outstanding from 2012/13*

<b>Land Transfer</b>	<b>2014/15</b>	<b>2013/14</b>
Total cases considered	10*	9*
Decisions issued	5	3
Decisions outstanding	2	6
Out of Jurisdiction	3	0
Withdrawn	0	0

*\* 4 new referrals and 6 decisions outstanding from 2013/14*

*\*\* 6 new referrals and 3 decisions outstanding from 2012/13*

## Appendix 2 - OSA Expenditure 2014-15 and 2013-14 <sup>1</sup>

Category of Expenditure	2014-15 £000	2013-14 £000
Adjudicators' fees	756	527
Adjudicators' expenses	28	22
Adjudicator training/meetings	95	58
Office Staff salaries	180	176
Office Staff expenses	5	5
Legal fees	45	26
Publicity <sup>2</sup>	0	0
Professional services	3	0
Administration/consumables	1	1
<b>Total</b>	<b>1,113</b>	<b>815</b>

### Notes:

1. Information relates to financial years 2013-14 and 2014-15. The report covers the academic year 2013/14.
2. 'Publicity' relates only to the notification of public meetings held by the adjudicator.



Office of  
the Schools  
Adjudicator

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