

**Written evidence from The Interim Joint Chief Adjudicators, Office of the Schools  
Adjudicator (CWS 03)**

**Education Committee  
Children's wellbeing and Schools Bill**

**Background Information**

The functions of the Schools Adjudicator

1. The role of Schools Adjudicator originated in the School Standards and Framework Act 1998.
  
2. Schools Adjudicators deal with:
  - i. Objections to the admission arrangements of maintained schools and academies. Adjudicators have undertaken this role in relation to mainstream schools since 1998 and in relation to academies since their instigation.
  - ii. Applications to vary the admission arrangements of maintained schools after they have been determined. Applications to vary the admission arrangements of academies are determined by the Department for Education (DfE).
  - iii. Appeals by maintained schools against a direction by a local authority that a particular child must be admitted. The DfE deals with requests by local authorities to direct the admission of a particular child to an academy, but in all cases now asks the Adjudicator for advice. The Adjudicator undertakes a full investigation of the circumstances of the case and sets out the findings in a written advice document along with a recommendation.
  - iv. Land disputes. Where a maintained school changes category, there are sometimes disputes with the local authority about ownership of land. All land used or held for the purposes of the school will transfer, but where there is shared use or a local authority has a facility on school land, the function of the Adjudicator is to decide which land must transfer in accordance with the parameters set in Regulations. (The Adjudicator has acquired additional powers over land disputes and compensation relating to academies, but these powers are not yet operational).
  - v. Statutory proposals. Proposals, for example, to increase the size, reduce the size, change from single sex to co-educational status can be referred to the Adjudicator, but only those relating to maintained schools.
  - vi. Appeals against decisions by local authorities to close a maintained school.
  - vii. A case can also be referred to the Adjudicator where a local authority has failed to make a decision on a statutory proposal or a proposal to open or close a maintained school initiated by the governing body, trustees or the relevant religious authority of a maintained school.

The Adjudicator currently has no role in relation to variations, statutory proposals or the opening, or closing of academies.

3. Traditionally, the largest area of work was determining objections to admission arrangements. The work of the Adjudicator was largely seasonal and focused upon the period from 15 May (the closing date for submitting objections) to December. Adjudicators endeavour to complete determinations on objections in good time before the closing date for applications, which is 31 October for secondary schools, and 15 January for primary schools.
4. The Chief Adjudicator is required to produce and publish an Annual Report for the Secretary of State about the work undertaken. For the purposes of this Report, a questionnaire is sent out to all local authorities in England. Their responses indicate the challenges they face relating to school admissions at the normal point of entry and in-year. The evidence suggests that the process broadly works well at the normal points of entry, but the picture for in-year admissions is very different.

#### The work of the Schools Adjudicator

5. Adjudicators are statutory officers appointed by the Secretary of State for Education. They are each single person tribunals independent of the DfE. Adjudicators have a quasi-judicial function; in essence they find the relevant facts and apply the relevant law to reach a decision. On that basis Adjudicators deal with the cases referred to them that are within their statutory jurisdiction, in the same way that a tribunal or court would.
6. All Adjudicators have a background in the education sector at a senior level. Some are former head teachers. Others are (or have been), for example, Ofsted Inspectors, Directors of Multi Academy Trusts, chairs of governors, education lawyers, Directors in local government and senior civil servants. Adjudicators work on a collegiate basis and share a broad spectrum of knowledge across the education sector.
7. For the majority of the year 2024, there were only eight Adjudicators. This year saw an increase in almost all of our areas of work. In terms of casework, the number of new cases submitted to the OSA in 2024 was 351. This was more than the 292 submitted in 2023 when there were 12 Adjudicators in post.
8. In considering cases, Adjudicators never rely exclusively upon the evidence submitted by the parties. Additional questions are always asked and further information sought. Adjudicators conduct their own investigations in order to establish relevant facts. The process is transparent, and Adjudicators share all information taken into account in making decisions with all parties and allow them

to comment. Given that in almost every case Adjudicators deal with, one party will inevitably be disappointed, there have been very few successful challenges to decisions (the last being in 2015). Complaints which necessitate the exercise of the formal complaints procedures are almost never received. None were received in 2024.

9. Schools are busy and objections are generally unwelcome. Adjudicators are always mindful of these facts, and grateful to all involved for being cooperative and respectful of our process. On occasions when Adjudicators visit schools and local authorities, the parties are generally professional and cordial to one another. There have been some examples of cases where the cooperation between the admission authority and the school has broken down. Cases in which it has been necessary for a direction to be sought are sometimes an example of this.
10. Most cases are considered on the papers. However, Adjudicators do hold meetings both online and at school/local authority premises where this is considered to be beneficial for the parties or necessary for the consideration of the case.
11. Adjudicator determinations are binding on the parties. However, the Adjudicator has no enforcement powers. The Secretary of State is able to direct compliance with an Adjudicator's determination should the need arise. Generally, from the information available, it appears that admission authorities do comply with Adjudicator determinations within the required timescales.

## Objections

12. The number of objections to and referrals of admission arrangements rose from 138 to 153 in 2024, with several 'multiple objections' (objections on the same point made by a large number of people). Any person can bring an objection to the Adjudicator provided they bring it before 15 May in the year in which the admission arrangements are determined<sup>1</sup> and provided no Adjudicator determination has been made on the same point for the same school within the last two years.
13. The majority of objections are to the admission arrangements for secondary schools, and most secondary schools are academies. The admission arrangements of some high-achieving, oversubscribed secondary schools have been objected to on more than one occasion. Objections tend to be made by a single parent, large groups of parents, special interest organisations<sup>2</sup>, members of the public and local authorities. Voluntary controlled schools and community schools can object to the published

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<sup>1</sup> There are some exceptions to this time limit.

<sup>2</sup> One example is the British Secular Society.

admission number (PAN) set for the school by the local authority if it is lower than they would wish. There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator must have regard when considering any such objection.

14. In objections cases, the Adjudicator is not able to dictate that an admission authority make specific changes to its admission arrangements. The extent of the Adjudicator's jurisdiction is to require that admission arrangements must be revised. This is unhelpful in cases where admission authorities ask for draft changes to be approved or ask for advice on how their admission arrangements should be changed. In the Children's Wellbeing and Schools Bill 2024, there is a new power for Adjudicators to set a school's published admission number on receipt of an objection. It appears that Adjudicators are to be given similar powers in relation to setting the PANs for academies in some circumstances. However, the Bill is yet to receive Parliamentary approval. This new power will be subject to parameters set out in Regulations, the content of which is not yet known.
15. In some cases, where there is an objection to a school's PAN often there is an alternative PAN which would resolve the difficulties identified by the objector, however the Adjudicator is not able to require the admission authority to set that PAN. The Adjudicator was consulted upon and agreeable to taking on these new powers, but did not have sight of any relevant draft Bill clauses prior to publication.
16. This year objections were received from a maintained school which considered its own PAN was too low and from a large group of parents who considered the PAN of a particular school to be too low. These objections were within jurisdiction. Objections are also received from local authorities and schools that a particular school's PAN is too high, and that this is causing problems for other schools in terms of low pupil numbers (and occasionally closure) of neighbouring schools. These objections were not within jurisdiction. The Adjudicator's current jurisdiction is to consider, where there has been a reduction in the PAN, whether the PAN which has been set is reasonable and operates fairly to the children and families involved in the process.

#### Variations

17. The largest increase in the work of the Adjudicator in 2024 was in the number of applications for approval of proposed variations to admission arrangements, which rose from 92 new referrals in 2023 to 132 in 2024. The majority of these requests related to proposals to reduce the PANs for primary schools due to falling rolls. Unlike in previous years, these requests came in throughout the year. This is continuing, though the number did reduce in December.

18. As this formed a main area of the work of the Adjudicator, it appeared that there were problems caused by having too many school places and not enough children to fill them. However, evidence gathered for the purposes of the Annual Report presents a very different picture in some areas where local authorities say they are struggling to fulfil their duty to ensure sufficient school places, particularly at secondary level. More is said about this in the section on the Annual Report.

#### Directions and Direction Advice

19. Under section 25 of the Schools Standards and Framework Act 1998, the Adjudicator must give advice to the Secretary of State on such matters relating to the admission of pupils to relevant schools as the Secretary of State may specify. In cases where the Secretary of State is asked by a local authority to direct the admission of a child to a specific school, the case will be referred to the Adjudicator. This permits the Adjudicator to be involved in functions which are not specifically assigned by statute. Although the Adjudicator is not the decision-maker, the Adjudicator's advice and recommendations are generally followed.

20. There has been a trend of increasing numbers of direction advice<sup>3</sup> cases. This increase has continued in 2024 from 59 to 61, which is not a significant increase. However, the main difference has been that these cases have been coming in on a weekly basis throughout the year. Looking back to 2019 when the Schools Adjudicator first started giving advice to the Secretary of State on these cases, there has been a significant increase as numbers were then well under 20 annually.

21. Schools report not receiving sufficient information about children's backgrounds when being asked to admit them via the Fair Access Protocol (FAP) and via the directions process. Some of the provisions in the Admissions Code are reported to cause confusion and lead to delay, particularly paragraphs 3.10 – 3.12. Schools are permitted to refuse to admit a child in-year where there is good reason to believe the child will display challenging behaviour, and refer the child to the FAP, the idea being that schools should each admit their fair share of children with challenging behaviour. However, other provisions in the Admissions Code prohibit admission authorities from seeking information about children's behaviour from previous schools prior to admission, and so there is a tension between local authorities and admission authorities which leads to delay in placements.

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<sup>3</sup> Direction cases means referrals by maintained schools of a notification by a local authority of its intention to direct the school to admit a named pupil. Direction advice cases means requests by the Secretary of State for advice on whether she should direct an academy to admit a named pupil.

22. A number of the cases which the Adjudicator advises on relate to looked after children. Admission authorities do not appear to fully understand that they should only refuse to admit looked after children in very exceptional circumstances, namely where the admission of the child is likely to cause serious prejudice. Admission authorities base the reasons for refusal as being generally prejudicial and frequently the reason for refusal given is that the school is 'full'. This leads to local authorities needing to invoke the direction procedure for maintained schools or in the case of academies, to seek a direction from the Secretary of State, which inevitably delays the placement of these children.
23. Paragraph 3.12 of the Admissions Code says that looked after children cannot be refused admission and referred to the FAP, which suggests that admission authorities should not be refusing to admit looked after children on grounds of challenging behaviour. There are some cases in which the behaviour in question is so extreme, it is questionable whether any mainstream school would have the resource to educate the child successfully and there is risk to other children and staff. The Code suggests that these should not be grounds for refusal to admit the child. The Adjudicator has raised this issue with the DfE in the hope that the position can be clarified when the Admissions Code is amended.

#### The Annual Report to the Secretary of State

24. Local authorities must produce a report on admissions for all the schools in their area for which they co-ordinate admissions. This must be published locally and sent to the Schools Adjudicator by 31 October each year covering the prior academic year. The report must cover as a minimum:
- a) information about how admission arrangements in the area of the local authority serve the interests of looked after children and previously looked after children, children with disabilities and children with special educational needs, including any details of where problems have arisen;
  - b) an assessment of the effectiveness of Fair Access Protocols including how many children were admitted to each school under it; and
  - c) any other issues the local authority may wish to include.
24. As stated above, local authorities have reported that admissions at the normal points of entry generally work well. However, there is a more troubled picture in relation to in-year admissions with some local authorities reporting severe difficulties in securing in-year placements. In some areas this is said to be due to additional house building without the necessary infrastructure, and immigration, often by asylum seekers and refugees. Local authorities described children being required to attend a school 20 or more miles from their home, with the associated impact on the children concerned and on home to school transport budgets.

25. Particular challenges were reported in placing children in higher year groups, with some relying almost exclusively on Fair Access Protocols (FAPs) for those in Years 9, 10 and 11; this was due to a shortage of places as well as reluctance from schools to accept these pupils. The matter of schools for which the local authority is not the admission authority (that is schools within multi-academy trusts and those which are their own admission authority) was raised by most, if not all, local authorities. Responses generally focused on the lack of information, power and oversight which local authorities have for these schools, including the number of available places at these schools. Several authorities described difficulties caused by schools choosing to reorganise their class structure in order to address financial issues, resulting in fewer pupil places than had previously been the case. Many reported schools “capping” their admission numbers. Some local authorities raised as an issue that schools are not required to have in-year applications co-ordinated by the local authority, stating that this gave them a lack of oversight and control.
26. The Adjudicator is not in a position to comment on these issues, save that in direction advice cases the Adjudicator does observe local authorities struggling increasingly to place children in-year and needing to rely upon FAPs and directions. This may give rise to vulnerable children being out of school for long periods. It is hoped that, because Adjudicators deal with cases where the admission authority and the local authority are at odds with one another, any impression about how well the system is working is informed by a minority of cases, however the evidence submitted by local authorities is worrying. There is cause for concern about the length of time it takes to place some children who are in some cases not receiving any education at all or only few of hours of home tuition. Others spend longer than necessary in alternative provision facilities leaving fewer places available for those who have need of them.

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