

Annual Report

September 2007 to August 2008




Office of the
Schools
Adjudicator

Dear Secretary of State

I attach my annual report for 2007/2008.

This will be my last annual report as Chief Adjudicator for Schools and I take this opportunity of expressing my thanks to the many people who have helped to make my experience over the past six years so enjoyable and rewarding. I have worked with a total of 17 colleague adjudicators, highly competent professionals whose expertise and goodwill have made my task of leading them a pleasure. I have received admirable support from the small team of administrators in the office in Darlington and have greatly appreciated their hard work and tolerance. The advice we have received from the Treasury Solicitors has always been to the point and accurate. Our success in avoiding Judicial Reviews, and winning most of those we have been faced with, owes a great deal to them. I have also greatly valued the support I have received from the Administrative Justice & Tribunals Council. In particular, I have been grateful for the wise guidance of its Chairman, Lord Newton. Finally, I have been grateful to you, your Ministerial colleagues and predecessors and to your officials for the support you have all given me. There has never, in my experience, been an occasion in which a Minister or official has attempted to interfere with the independent decision of an adjudicator but we have always been aware of the Department's general interest in and understanding of our role. Adjudicators have often to take difficult and controversial decisions and it has proved helpful to have such well judged support.

I wish my successor well in his/her new role. I know she/he will find it a challenging and rewarding position and am confident that there is a very firm basis for developments in the future.



Sir Philip Hunter
Chief Adjudicator

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Annual Report 2007 - 2008

1. Seven years ago, in the year before I took up the post of Chief Adjudicator for schools, there were 14 adjudicators who determined 78 cases. In 2007/2008, there were 10 adjudicators and 537 cases (see Annex 1). We have become much more efficient and I am confident that we have continued to offer a high standard of service.

2. During the past six years, there has been a significant increase in the range of tasks required of us. The remit for the OSA when it was established in 1998 was to:
 - resolve disputes about statutory proposals on opening, closing and changing the size and character of schools;
 - resolve disputes about admission arrangements; and
 - determine applications from admission authorities for variations to admission arrangements mid-year.

3. We have continued to take responsibility for these tasks and have taken on:
 - dealing with objections by parents to school admission arrangements. We have had 121 of these cases referred in the last two years;
 - settling disputes between local authorities, schools and church authorities about the ownership of land. There have been only four of these cases;
 - ruling on objections from schools that have been directed by local authorities to admit hard to place pupils. There have been 38 of these cases in the past two years;
 - deciding on competitions for schools where the local authority wishes to participate in one of the competing bids. There have been only two of these cases referred to us;
 - determining objections by local authorities to the establishment of Trusts. We have had two of these cases this year.

4. During 2007/2008, I was asked to take on two new tasks. The first of these was to review compliance with the Admission Appeals Code by admission appeals panels in a small sample of local authority areas. We worked in 13 local authority areas and I produced a report containing a number of recommendations. Generally we found that appeals panels organised by local authorities and dioceses were compliant with the Code but a significant number of those organised by foundation schools were not. I attach at Annex 2 a summary of the findings and recommendations from the exercise.
5. I was also asked to review the compliance of admission authorities with the School Admission Code. We selected a large sample of schools across all 150 local authorities and had their admission arrangements checked by lawyers. We found that there were problems in a very high proportion of them. However, most of them were due to misunderstanding of the Code and related statutes. I am satisfied that the issues we identified in our sample have been dealt with by local and church authorities and I have made some suggestions about how admission authorities generally can be assisted in producing compliant arrangements in future. I attach at Annex 3 a summary of the findings and recommendations.
6. Several national developments have affected us in recent years. Our work in resolving disputes on statutory proposals has changed as the 'Building Schools for the Future' programme has been rolled out. On the whole, local authorities appear to have handled the programme well. Many major school reorganisations have been implemented without local disputes. We have, however, continued to be called in for the closure of small primary schools and for some secondary schemes that involved the establishment of academies and Trusts. Some of these projects have been complex and politically charged. In a few cases, the adjudicator's determination has been taken to Judicial Review, but all of our decisions have been upheld by the courts.
7. For school admissions, there have been some major improvements in the system. Before 2003, parents were faced with making separate applications for places in their local foundation and aided schools, using different forms at different times and subject to different processes – often involving interviews. Parents made clear their dissatisfaction with that system and, after pressure from Members of Parliament, the 2003 Admissions Code of Practice was introduced. This produced a simpler more workable system for parents, but there were still problems for them. In 2007, the new Admissions Code made further advances and we now have a robust framework for admission authorities.

The exercise I conducted this year has ensured general compliance with the Code. Local and faith authorities can now concentrate their attention on improving their administrative processes, providing better information for parents, simplifying admission arrangements, and improving the organisation of appeals.

8. We have tried to maintain a focus on the quality of our work – producing determinations deriving from a rational and open process and presenting them in well written, clear reports. We continue to aim to produce determinations within six weeks of receiving the information needed to reach decisions. Although we fell a little short of that target this year (88% of reports within the time), I am aware that our target is more ambitious than other tribunals. We continue to have very few referrals to Judicial Review and most of our decisions that are referred are upheld.
9. The appointment of a new Chief Adjudicator will provide an opportunity for the OSA to take stock and plan for the future. I hope it will continue to focus on improving its performance in resolving disputes in a fair, open and cost-effective manner. It will also need to design processes and structures to cater for the new responsibilities it will be asked to take on. It promises to be an interesting and challenging time

ANNEX 1a

Objection to admission arrangements	2007/08	2006/07
Total objections	369	173
Decisions issued	289	117
Decisions outstanding	26	8
Out of Jurisdiction	4	13
Withdrawn	50	31
Secretary of State	0	3
Advice to Secretary of State	0	1

Variation to admission arrangements	2007/08	2006/07
Total referrals	66	59
Decisions issued	50	40
Decisions outstanding	4	2
Out of Jurisdiction	8	9
Withdrawn	1	8
Not properly made	3	0

Statutory Proposal	2007/08	2006/07
Total referrals	70	79
Decisions issued	65	70
Decisions outstanding	2	6
Out of Jurisdiction	3	3

Direction - Section 96	2007/08	2006/07
Total referrals	28	10
Decisions issued	22	7
Decisions outstanding	0	0
Out of Jurisdiction	2	0
Withdrawn	2	3
Not properly made	2	

Land Transfer*	2007/08	2006/07
Total referrals	4	0
Decisions issued	2	0
Decisions outstanding	2	0
Withdrawn	0	0

Total referrals	537	321
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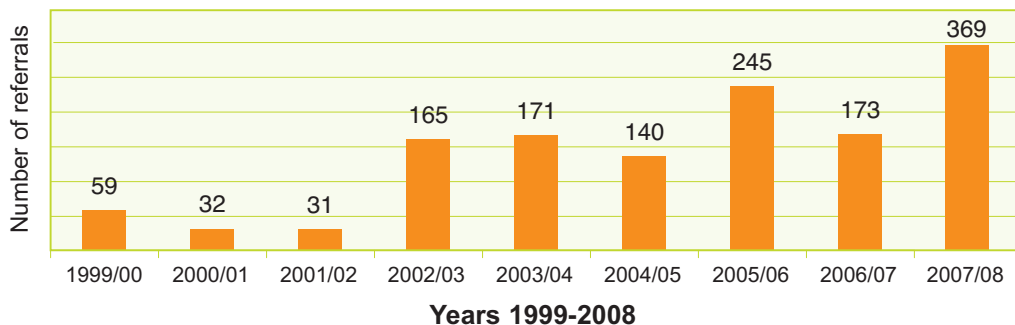
Notes:

*new area of work for 2007/08

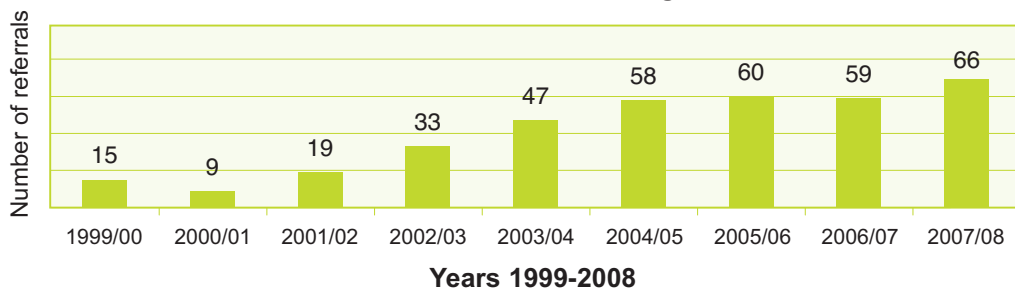
Copies of determinations can be found on the OSA website at www.schoolsadjudicator.gov.uk

TOTAL NUMBER OF REFERRALS 1999-2008

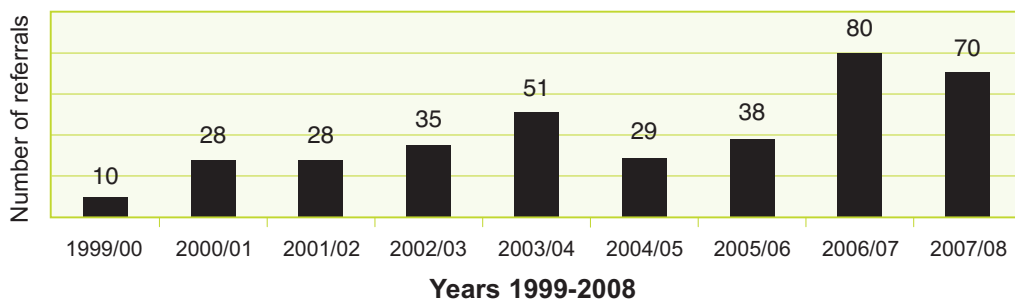
Objection to admission arrangements



Variation to admission arrangements



Statutory proposals



ANNEX 1b

Admission Arrangements referred to the Adjudicators 2007/2008

OBJECTORS

Objector	Upheld	Partially Upheld	Not Upheld	Total
LA	142	10	6	158
Admission Authority School	2	6	5	13
Community/VC Schools	1	0	5	6
Admission Forum	3	1	0	4
Parents	36	54	18	108
TOTAL	184	71	34	289

SUBSTANCE OF OBJECTIONS

Subject	Upheld	Partially Upheld	Not Upheld	Total
Siblings	37	1	2	40
Catchment / Feeder / Distance	30	15	20	65
Admission Number	6	5	7	18
Banding / Selection / Conditionality / Subjectivity	13	1	25	39
Scrutiny - Compliance	117			117
Clarity / Complexity / Inconsistency / Consultation	8	7	18	33
Supplementary Information Form	6		1	7
Other	8	12	29	49
TOTAL	225	41	102	368

Notes:

1. The totals in these tables do not agree since the first table is a total of the whole objection and the subsequent tables show a breakdown of the substance of the objection – covering more than one area.
2. There were 66 “variations to admission arrangements” not covered by these tables.

ANNEX 1c

The table below gives a breakdown of all the categories for statutory proposal decisions issued this year.

Subject of proposal	Approved	Conditional approval	Approved with mod	Rejected
To modify the implementation / conditional date of approved proposals	22			
To establish a school	2			
To establish Trust Foundation status	1		1	
To discontinue one or more schools and establish replacement provision	21	1		1
To add a special resource unit to a school		1		
Re-organisation of schools		1		
To establish a nursery		1		
To add a sixth form	2		3	
To discontinue a school	3			
To enlarge or make a prescribed alteration of a school	2		2	
To discontinue one or more schools and establish a new school by Competition*	1			
TOTAL	54	4	6	1

Notes:

Under Schedule 6 of the School Standards and Framework Act 1998 an adjudicator can (a) reject the proposal referred to him (b) approve it without modification (c) approve it with modification or conditions.

* only LA entered the competition.

ANNEX 1d

Expenditure April 2007 to March 2008

The financial information derives from the DCSF budget managements system and relates to the two last full financial years 2006-2007 and 2007-2008.

This overlaps with the period of this report but does not coincide with it.

	2007/08	2006/07
Adjudicator programme costs	£,000	£,000
Adjudicators' fees	299 ¹	266 ¹
Adjudicators' expenses	29	29
Adjudicator training/meetings	6	4
Legal fees	89	60
Publicity	34 ²	54 ²
Consultancy fees	28 ³	14 ³
Administration/consumables	3	3
Total	488	430

	2007/08	2006/07
Staff running costs	£,000	£,000
Staff salaries	158	165
Staff expenses	9	10
Total	167	175

Total expenditure	655	605
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Notes:

- 1 Includes National Insurance contributions.
- 2 Relates to COI fees for media handling and for adjudicator public meetings.
- 3 Relates to compliance exercise.

ANNEX 2 - Admissions Appeals

1. Ten adjudicators conducted a series of interviews with organisers, members, clerks and presenting officers of appeals panels; distributed and analysed questionnaires and observed hearings. The exercise was conducted in 13 local authority areas and 6 dioceses.
2. Adjudicators found that, in almost all respects, local authority and diocesan appeals panels complied with the School Admissions Appeals Code. There was some good practice in appeals organised by the 32 individual schools examined, but there was also evidence of widespread and serious departures from the Code. There were wide variations in practice between organisers in their use of panel members – from one authority where 16 panel members handled 500 appeals per year to another where 45 panel members handled 200 appeals. Many panel members felt they would welcome more support. There was a range of perceptions on the performance of presenting officers and clerks, but it was clear that the staff involved were committed and keen to learn. The standard of accommodation, and the extent to which IT was used in the handling of appeals, were mixed, with some good examples and some where further developments were needed. The average estimated direct costs fell between £150 and £200 per appeal – considerably cheaper than most other tribunals. The effectiveness of the appeals system varied as did – often significantly - the number of appeals per school and the prospect of parents winning those appeals. Appeals organisers, panel members, clerks and presenting officers have a great deal to learn from each other in how to improve their performance.
3. The conclusions from the exercise were that:
 - the sample of appeals observed were run by highly competent, committed people who would welcome more support;
 - there are some valuable developments under way in several areas, with good co-operative training programmes, appraisal systems, innovative use of IT and sophisticated methods for surveying the satisfaction of parents and schools;
 - there are opportunities for changes to national regulations that would reduce the number of appeals and the associated stress for parents, in particular, appeals for infant classes:
 - aided and foundation schools should be persuaded to use appeals tribunals run by local authorities, diocese or private companies and should not attempt to negotiate the complexity of running their own tribunals;
 - presentation of national statistics should be reviewed to give a more accurate, accessible picture of the performance of the process;
 - a similar exercise should be conducted next year.

ANNEX 3 - Compliance of Admission Arrangements with the Code

1. In June, I asked local authorities to send me the determined admission arrangements for all schools in their areas. On receiving them, I sent a sample of them (about 3000 of the 5300 foundation and aided schools) to junior barristers in Leeds and asked for their advice on whether the arrangements complied with the Admissions Code. A colleague, June Brown, then sent reports to local and faith authorities identifying points of non-compliance with the Code and asking them to deal with those points. In September, I asked local and church authorities how they had dealt with the points we had identified.
2. Our advisers identified a very large number of issues that needed attention. Over half the points raised concerned the absence of a definition or the failure to specify the details of a process. Local and faith authorities have agreed that these can be dealt with simply by including “default” definitions in their admission booklets, informing parents that those definitions will apply where full definitions do not occur in individual arrangements. Governors of schools concerned were asked to regularise the arrangements in their normal meeting in the autumn term. There were then two further groups of points:
 - (i) Points within Supplementary Information Forms. Almost all of these arose simply because schools had failed to bring their forms up to date or because they had asked questions of applicants (such as place of work of parents) which were legitimate for children already on roll at the school but were not legitimate at the application stage.
 - (ii) In over 800 schools and 10 local authorities we identified more substantial contraventions. These included some that did not give the required priority to children in care. Others gave priority to parents who listed the school as first preference or gave priority to siblings not in school at the time of enrolment. Some did not include tie-breakers. Others did not spell out oversubscription criteria in a form that parents could easily understand.

I am satisfied that all of these points derived from misunderstandings of the Code, not from wilful disregard of it.

3. I have now had reports from local authorities and from the Church of England Board of Education, the Roman Catholic Education Service and the Jewish Board of Deputies. I have been assured that all the

necessary action has been taken to ensure compliance with the Code in the schools identified.

4. I make four recommendations:

- that the revised Admissions Code contain definitions for a small number of terms such as 'parents', 'siblings', 'distance' and 'home address', and that local authorities and schools are required to use them. There can be no advantage in asking five thousand committees to define these terms for themselves, particularly when it has been shown that a large number of them have had difficulty in doing so.
- that the Department, in discussion with the faith authorities, draw up some model Supplementary Information Forms. I know that many Dioceses are working on models already. Schools should be encouraged to use those models.
- that the Department sets up a website which includes an 'admission arrangements builder' (of the kind already available for constructing notices for statutory proposals). This should comprise templates and standard wording for oversubscription criteria. A facility of this kind would not interfere in any way with the freedom of admission authorities to devise their policies for admissions but would help them make arrangements that meet the technical requirements of the Code.
- that schools are required, as now, to submit their determined admission arrangements to their local authorities by the 29th of April each year and local authorities are required to post these on a website (with links to a national website). All the arrangements would then be readily available for scrutiny by anyone, including the Chief Adjudicator who could sample them for compliance as resources allow.

5. The exercise covered only a sample of schools but I am sure it will have vastly improved compliance with the Code for admissions in 2009. It has also provided a training opportunity for the officers involved in this work. I am extremely grateful for the excellent collaboration and assistance I have received from local and faith authority officers. If the recommendations I suggest above are implemented, and given the new powers available to the adjudicator next year, you can be confident of an excellent degree of compliance with the Code throughout admission authorities in England.

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