

## **Office of the Children's Commissioner**

**"It might be best if you looked  
elsewhere"**

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**An investigation into the schools  
admission process**

**April 2014**

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# About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national public sector organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. We promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child and, as appropriate, other human rights legislation and conventions.

We do this by listening to what children and young people say about things that affect them and encouraging adults making decisions to take their views and interests into account.

We publish evidence, including that which we collect directly from children and young people, bringing matters that affect their rights to the attention of Parliament, the media, children and young people themselves, and society at large. We also provide advice on children's rights to policy-makers, practitioners and others.

The post of Children's Commissioner for England was established by the Children Act 2004. The Act makes us responsible for working on behalf of all children in England and in particular, those whose voices are least likely to be heard. It says we must speak for wider groups of children on the issues that are not-devolved to regional Governments. These include immigration, for the whole of the UK, and youth justice, for England and Wales.

The Children and Families Act 2014 changed the Children's Commissioner's remit and role. It provided the legal mandate for the Commissioner and those who work in support of her remit at the OCC to promote and protect children's rights. In particular, we are expected to focus on the rights of children within the new section 8A of the Children Act 2004, or other groups of children whom we consider are at particular risk of having their rights infringed. This includes those who are in or leaving care or living away from home, and those receiving social care services. The Bill also allows us to provide advice and assistance to and to represent these children.

## **Our vision**

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

## **Our mission**

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

# About the United Nations Convention on the Rights of the Child

The UK Government ratified the UN Convention on the Rights of the Child (UNCRC) in 1991. This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the UNCRC is not incorporated into UK law, it still has the status of a binding international treaty. By agreeing to the UNCRC the Government has committed itself to promoting and protecting children's rights by all means available to it.

The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the UNCRC in all our activities. In relation to this work, we consider the following Articles of the Convention to have the most relevance.

**Article 2:** All rights apply to all children regardless of their personal circumstances and regardless of what they have done.

**Article 3:** The best interests of the child must be a primary consideration in all actions.

**Article 4:** Governments must do all they can to fulfil the rights of every child.

**Article 12:** Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

**Article 23:** Children with a disability have a right to special care and support.

**Article 28:** Every child has the right to an education [...]. Discipline in schools must respect children's human dignity.

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## Foreword by the Children's Commissioner

The investigation leading to this report arose out of our two year formal Inquiry into issues of inequality and intentional and unintentional illegality in school exclusions. Wherever we went during that Inquiry we were told that schools' deliberate or inadvertent manipulation of statutory requirements on admissions were a significant issue. Senior stakeholders from all parts of the country assured us that such manipulation was intended to ensure that some children (those who were likely to do well) were admitted; whilst others were excluded by the admissions process rather than after they started at the school. We were told this so confidently, by so many witnesses, including head teachers, legal experts and academics, that it seemed to us we must investigate the claims further.

This report finds that, whatever the widely shared and often re-stated professional suspicions might be, in fact it is unlikely that large numbers of schools misuse the admissions system to manipulate their intake.

We commissioned research from the National Foundation for Educational Research (NFER) who put out a wide call for evidence and information on what was actually happening. Their research was painstaking and detailed, but the sample of parents responding was small and exclusively those of children with special educational needs (SEN). Their stories differ markedly from the very positive general picture of schools complying with statutory requirements. These parents describe, often in upsetting terms, school staff acting dismissively towards them and their children. They describe schools failing to respond to phone calls, emails and personal approaches or telling parents they did not think the child would 'fit in' at the school. This was a very small sample of parents, but we find it difficult to believe we have identified the only people in the country this has happened to.

I can accept that some schools may genuinely believe they are ill-equipped to serve the needs of some children and feel obliged to tell this to parents. However, the law states that this is not their decision to make. Equally, I can accept that it may not be their intention to dissuade parents from applying. However, it is not their intention that matters but the effect that their words and actions have.

The results are not fair on the child and we need to acknowledge the denial of rights involved. Whilst this report stresses the low level of questionable behaviour that takes place, as Children's Commissioner I must question why ANY child or family should be faced with the disappointment and upset that comes through so clearly from our research.

During our exclusions Inquiry we were told of schools making choices to admit, or exclude by not admitting, based on of a child's and family's characteristics including income. We found that some schools charge as much as £300 per child for uniforms plus more for sporting and other

equipment costs. When a basic uniform from a high street supplier costs a quarter of that amount, it is reasonable to assume that some parents on low incomes may be dissuaded from applying. That the setting of, what is in effect, an income threshold, is against part 1.8 of the statutory code of practice on admissions to state-funded schools seems to have escaped the notice of the schools concerned. It has not escaped ours. Indeed, it is surely a cause of shame given it skews the intake of some schools against particular groups of children.

This report compares Year 7 admissions into neighbouring secondary schools in the same council area. We found that in some localities, in spite of having identical admissions criteria and supposedly wholly comprehensive intakes, neighbouring schools had very different intakes. High achieving children in these areas were clustered in one or two schools, with others taking more low achievers. This is despite no overt academic selection in the area at all. None of the schools concerned overtly state prospectuses or other materials that selection is in operation. But given everything else about them is equal, it is clear that something is amiss.

When these negative things happen to children and their families, official systems are usually strong enough to put things right. We pay particular regard in this report to the Office of the Schools Adjudicator, and where schools in a diversifying system remain local authority maintained, the Local Government Ombudsman.

Admissions are governed by a statutory code of practice for a reason: to give equal opportunities to children at key points of transition in their schooling. That such a code can never guarantee every child a place exactly where they want, when they want to go there, is not the issue. That even a small minority of schools do things which are against the spirit of this code surely is.

It is vital that schools continually review their admissions policies. When they do, they must make sure that nothing they do, or do not do, will put children off applying for a place. This extends to the way they speak and write to people; the messages they place on their websites; their policy on uniform or the costs of school trips; and how they answer questions from parents and children. This is not just a 'nice to have' or 'good practice'. It is the law and it is non-negotiable.

I commend this report to all those who consider that the right of the child to be given every chance is to be defended, and that those who deny those rights must be held to account.



**Dr Maggie Atkinson**  
**Children's Commissioner for England**

## Summary of recommendations

1. The Department for Education, working with the Office of the Schools Adjudicator (OSA), should issue further clarification on the difference between criteria based on religious observance, which are lawful, and those based on non-religious service, which are not. OSA should seek consensus from faith bodies on the differences between these criteria, drawing on existing good practice in faith schools in England.

2. We recommend that the Local Government Ombudsman be given jurisdiction to examine admissions appeals for all state-funded schools. This would ensure that all parents or carers had access to a consistent route for further appeal, regardless of the school they attend. It would also ensure consistency with the remit of the OSA, which has jurisdiction over admissions arrangements for all state-funded schools

3. The OSA should examine whether there have been cases where it has taken a different view regarding the legality of admissions arrangements from that taken by appeals panels, and take appropriate steps should it prove to be a significant issue.

4. Further large-scale, qualitative research is required to enable all concerned to understand the specific nature and scale of inequality in admissions outcomes, and to report on the reasons for this. This should be a priority for the Department for Education's future programme of commissioned research.

5. All admissions authorities, as part of the regular reviews of admission arrangements which they are required to undertake, should conduct an assessment of the extent to which existing arrangements meet their duties specified in the Public Sector Equality Duty (PSED) under the Equality Act 2010. They should particularly examine whether any of their actions may have the effect of dissuading particular groups from applying, and if so what they should do to counter this effect and comply with the Duty.

6. As part of their work in co-ordinating admissions, local authorities should be given powers to collect anonymised demographic information on the characteristics of children applying for a place at the state funded schools across their areas, alongside data on places offered and accepted. The Department for Education should issue a clear statement on the degree to which it is lawful for schools to act in any way that has the effect of dissuading certain parents or carers from applying for a place. Should legal advice indicate any such action is currently lawful, urgent steps should be taken to amend the law. Being dissuaded from applying to a school should become grounds for parents to appeal an admissions decision. Appeals on this ground should be treated in the same way as other appeals.

# Introduction

## Background to the project

Using the Children’s Commissioner’s powers of Inquiry, between 2011 and 2013 the OCC carried out an extensive formal Inquiry<sup>1</sup> into school exclusions in England. The Inquiry led to three published reports, covering the exclusions system as a whole, inequalities in exclusions, and an investigation into unlawful exclusions (OCC, 2012; 2013a, 2013b). In evidence given for the academic research and in formal responses to the call for evidence for the latter piece of work, we were told repeatedly by a wide range of education stakeholders that unlawful exclusions were only one way in which some schools manipulated their intake of pupils. Head teachers, advocacy groups and other stakeholders repeatedly told us that they believed unlawful admissions activity was a significant issue in their localities. They claimed that a minority of schools used loopholes in the admissions system to ‘improve’ their intake, and hence reduce the number of children who:

- had needs which it would be difficult and/or expensive for the school to accommodate (for example those with SEN, particularly at School Action or School Action Plus levels, or those with English as an additional language)
- had exhibited challenging behaviour in primary school
- were less likely to be academic high-achievers, and thus ‘posed a risk’ to a school’s examination results or league table position.

In formal evidence sessions, and in visits to localities across England, the Inquiry team was told that unlawful admission practices were at least as prevalent as unlawful exclusions. Typically, they described schools trying to attract some sorts of children to apply for a place, and deter others.

In common with their narratives on unlawful exclusions, however, those who reported the practice to us were not prepared to give specific instances where this had happened, or to name specific schools. This fact poses a dilemma for any organisation trying to investigate potentially unlawful activity, given accusations were made, but not evidenced. If by its nature the alleged activity is covert, and accusers are not prepared to make it public or to make it stick, how does one assess evidence?

In the course of our Inquiry into unlawful exclusions, we did not have the resources to investigate these claims. We were therefore unable either to corroborate or refute them. However, given the claims’ widespread and repeated nature, the professional credibility of those making the claims

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<sup>1</sup> Details of the Inquiry can be found at:  
<http://www.childrenscommissioner.gov.uk/info/schoolexclusions>



(including head teachers, senior local authority officers and others), and the serious nature of the accusations, we considered it would be worthwhile undertaking a further piece of work to examine if there is concrete and provable evidence to support the many claims they made.

### **Purpose of the project**

The purpose of the project was to examine whether there is in fact any robust evidence of publicly funded schools acting either unlawfully or unethically in running school admissions. It also examines whether the system for monitoring the lawfulness of school admissions has sufficient powers to identify unlawful activity, and if it is identified, to provide redress. Throughout, we have focused on the achievement of children's rights, as set out in the UNCRC and other legal instruments.

This is an initial investigation to explore whether or not there is evidence to corroborate the accusations made to us by witnesses and in evidence submissions to the work of our formal Inquiry during 2011–13. It is not intended to provide a full, in depth analysis of the admissions system, and it does not do so.

The primary academic research we commissioned as part of this investigation was small scale. It was not intended to be representative nationally, and we do not draw conclusions, or make claims about the prevalence of any unlawful activity from it. It does, however, provide an insight into the experiences of some parents and highlight potential problems that warrant further consideration.

Other bodies than the OCC have a statutory responsibility to ensure that any concerns identified are followed up. In particular we have consulted the Office of the Schools Adjudicator (OSA) throughout, as the statutory function resides with that office, and with the Department for Education (DfE) as its host Department. We have also consulted the Local Government Ombudsman (LGO), who has powers to judge the quality of the admissions appeals for maintained schools.

### **Scope of the project**

This project examines arrangements for the 'normal' rounds of admissions to state-funded schools, which take place for entry to Reception (for primary schools) and Year 7 (for secondary). There are approximately 1.2 million such admissions in each school year. For resource reasons, we were unable to look at the much smaller number of 'in-year' admissions, where a child moves from one school to another other than at those points. Other bodies have however done a good deal of work on this, including the Royal Society for the Arts (Rodda et al, 2011) and the Local Government Ombudsman (2011).

For the purpose of this project, we are not examining the fitness for purpose of the statutory codes which govern admissions, and we make no judgements

at this stage on which if any admissions criteria should or should not be lawful.

We are taking the existing legally binding arrangements for admissions as a 'given'. We may return to these issues in future, should we consider they merit further investigation.

In undertaking this work, we have examined the differing ways in which admissions are organised for different types of school. This should not be taken either as an endorsement or criticism of any type or types of schools, their patterns of ownership or governance, or their relationships with overarching bodies including those in national or local government. The OCC has no view on schools' organisation or on the increasingly diverse modes of school organisation and governance in the publicly funded sector. Our statutory duty is to promote and protect the rights of the child and to question where those rights are in danger of being denied, regardless of the school they attend.

### **The system for admissions to state-funded schools in England**

The admissions system for all publicly funded schools in England is governed by the same, statutorily binding, code of practice. The current School Admissions Code came into force in February 2012 (DfE, 2012). It is governed by Section 84 of the School Standards and Framework Act 1998.<sup>2</sup>

Each school's admissions are governed by that school's admissions authority. Depending on the type of school, this can be:

- the local authority
- the Free School Trust
- the School's governing body
- an Academy Trust.

In practice the admissions system operates as a market, with parents able to express a preference for their child to be admitted to a particular school, or a list of schools in their area in descending order of preference. All state-funded schools in England are required to admit all children whose parents or carers request a place at the school, unless there are more applications than the school has places. Rates of over-subscription vary widely between areas of the country. In some local authorities, almost all parents receive a place at their first choice of school. In others, notably inner London and some local authority areas elsewhere in England, the rate of first choices being granted can be as low as 60% (DfE, 2013a).

If the number of applications exceeds the number of places available, all schools' places must be filled according to a set of pre-published and objective over-subscription criteria. These are set by the relevant admissions authority. They must be compatible with the statutory admissions code. By

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<sup>2</sup> The full Act is available to view here: <http://www.legislation.gov.uk/ukpga/1998/31/contents>

law, all schools *must* give top priority to any children looked after by the state, or those who have recently been adopted. After they are accommodated, priority *must* be given to any children with a statement of special educational need<sup>3</sup> where the school concerned is named on the statement.

The remaining places are then allocated on the basis of the school's published admissions criteria. The statutory School Admissions Code, published by the Department for Education, was devised to ensure that all school places are allocated and offered in an open and fair way. The Code is legally binding. It applies to the vast majority state-funded schools and Academies but not to private schools. The code does not attempt to prescribe the structure or content of locally agreed protocols. Schools, usually but not always working collectively with their local authority across a given area, are free to develop and agree protocols which best serve the needs of children in that area. Admissions criteria can therefore be different for each school. Indeed, across the country, schools use many different criteria. This is legal.

Among the most commonly used criteria are schools giving priority to children:

- who have a sibling at the school already
- children of staff members
- who live close to the school
- who are from a particular religion (for faith schools)
- who live in a defined catchment area
- who do well in an entrance exam (for selective schools, such as grammar schools or stage schools)
- who went to a particular primary school (a 'feeder school').

Academies<sup>4</sup> may additionally give priority to children who receive the pupil premium or whose parents serve in the armed forces. It is the duty of schools to ensure that the local protocol works for them and is reviewed, as required, with the local authority.

In addition to the School Admissions Code, the admissions authority must also be aware of, and act on, their obligations under the Equality Act (England and Wales, Statutes, 2010) and take care not to make assumptions about applicants that may lead to unlawful discrimination. Discriminatory admissions decisions may include, for example, refusing to admit a pupil with Special Educational Needs (SEN) who has behavioural difficulties because the school is concerned that they will be disruptive.

The legality of any admissions authority's arrangements can be challenged by any interested party. Such challenges are made to the Office of the Schools' Adjudicator (OSA) – a first tier tribunal. If the OSA judges that admissions arrangements are unlawful, those arrangements must be changed for subsequent years.

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<sup>3</sup> Or Education, Health and Care Plan (EHC) when these are introduced in 2015.

<sup>4</sup> For the purposes of admissions, and for many other legal purposes, 'Free Schools' are counted as a subset of Academies.

The OSA does not get involved with admissions decisions made for individual children. If a family believes their child has been deprived of a requested place unlawfully, or if admissions criteria have been misapplied in their case, the statutory code is clear that they should appeal to the admissions authority. It is then the responsibility of the admissions authority to convene an independent appeal panel to hear the case. For cases where the local authority is the admissions authority, parents can make a complaint to the Local Government Ombudsman if they feel that their appeal has not been handled correctly.

## **Evidence base**

In the course of this investigation we have attempted to identify whether there is any evidence of schools using the admissions system unlawfully with the intention, or with the unintended effect, of manipulating their intake in favour of a cohort of pupils which is more able, or likely to be more engaged, than would otherwise be the case. In doing this work we have examined the following sources of evidence:

- commissioned primary research
- analysis of public data
- published case files relating to admissions, freely available from a range of public sector and charitable bodies.

### ***Commissioned research***

The OCC commissioned the National Foundation for Educational Research (NFER) to conduct original research with parents who had experience of the admissions system.

The aim of this exercise was to gather experiential information from parents and carers of children belonging to key vulnerable groups<sup>5</sup> in order to ascertain whether schools are adopting unlawful admissions practices. The work focused specifically on the interactions and conversations parents and carers may have with school staff prior to or around the time of primary to secondary transfer that might lead them to feel discouraged from applying for a place. In particular, we asked NFER to investigate the following.

- Whether parents and carers feel they were in any way discouraged from applying for any particular secondary school(s)? If so, in what way were they made to feel discouraged, by whom, and why?
- What did schools do to make them feel their child would be either welcome, or unwelcome, at a particular school?

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<sup>5</sup> These groups were specified by the OCC.

NFER conducted in-depth interviews with ten parents with relevant experience, and a further six with practitioners who work with parents on educational issues, including admissions.<sup>6</sup>

### **Official data**

We examined publicly available data on a range of issues relating to school admissions, including information on the socio-economic and other characteristics of the pupil intake of different schools.

Our intention in using these data was to examine how far the actual intakes of specific schools in given geographical areas match what should be expected, given their geographic location and published admissions criteria. We wanted to use the data to test how far any schools in the sample had higher or lower numbers of so-called 'difficult' pupils than would be expected. The data sources used for this analysis include the following.

- Data showing the proportion of parents whose children attended a school of their choice, by area.<sup>7</sup>
- Data on the socio-economic characteristics of children at different schools in a given area where the profiles and characteristics of children and families are similar to each other (DfE, 2013c).
- Data on the prior attainment of children gaining places at different secondary schools in an area, where the schools are similar in the intakes they are supposed to admit, rather than where intakes might be divided by ability tests at age 11 (Ibid.).
- Data on successful and unsuccessful admissions appeals, and on judgements made by the Office of the Schools Adjudicator (OSA).
- Data published by Ofsted on the characteristics of particular schools' intakes (Ofsted, 2014).

### **Publicly available case studies relating to the admissions process**

These were sourced from:

- the Office of the Schools Adjudicator (OSA)
- the Local Government Ombudsman (LGA)
- the Teaching Agency (now the National College for Teaching and Learning)
- the Fair Admissions Campaign
- the British Humanist Association.

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<sup>6</sup> These included teachers, educational psychologists, parent partnership advisers and people working for charities which support vulnerable parents.

<sup>7</sup> This is available at: <http://www.education.gov.uk/schoolsadjudicator/decisions>

## Findings

The remainder of this report comprises the findings of our work in analysing the information sources set out above. In doing this, we have identified three areas of the admissions system where there is the potential for schools to act contrary to their statutory obligations in order to manipulate their intake. These three areas are:

1. The potential adoption of oversubscription criteria which are inconsistent with the admissions code, and which may have either the intention, or the effect, of manipulating the intake.
2. The adoption of lawful admissions arrangements, which the admissions authority then fails implement correctly, either deliberately or in ignorance of statutory requirements.
3. Schools acting with the intention, or where their action has the unintended effect, of dissuading some parents or carers from applying for a place, whilst parents and children are looking at potential schools and places, but before any formal application has been made.

The processes available for identifying any unlawful activity in publicly funded English schools, and the systems in place to remedy it, vary depending on the type of activity, and to a lesser extent, on the type of school.

The remainder of this report examines where there is any evidence for each of these three types of activity taking place. It also explores potential reasons for any activity that should be identified as unlawful, and the fitness for purpose of the safeguards in place to prevent it. Where appropriate, we make recommendations for how these safeguards for children and their education should be improved.

# 1. Potential adoption of unlawful admissions criteria

## How the system operates

Determining whether or not the over-subscription criteria published by an admissions authority are lawful is the responsibility of the Office of the Schools' Adjudicator (OSA), a first tier tribunal. If a school's admissions arrangements are challenged by any interested party, as the law allows, OSA will make a judgement on how far they are consistent with the Schools Admissions Code.

If the OSA judges that arrangements are not consistent with the code, it can require them to be amended for subsequent years. It cannot, however, take on the case of an individual child. The process for this is set out below. The Admissions Code states that any person or organisation can make a referral to the Schools' Adjudicator. Following this change from the previous statutory arrangements, and given the increasing numbers of 'own admissions authorities' schools having arisen due to the rising numbers of Academies, the number of referrals to the OSA has risen over the last few years (from 127 in 2010 to 162 in 2013 ). However, the structure of the OSA and the flexible availability of Adjudicators are such that the OSA can manage widely varying numbers of referrals each year, and therefore adjudications continue to be made in a timely way.

The increasing number of schools which are their own admissions authorities, alongside an acknowledged continued increase in competition on attainment measures between schools over a decade to this point, means that both schools and local authorities have an incentive to refer other admissions authorities to the adjudicator if they believe they have unlawful admissions criteria. An increasing number of referrals to the OSA have come about in this way, as well as an increase in referrals from parents failing to gain a place in their schools of choice.

Taken together, the national pattern of appeals and their handling gives us strong reassurance that The Office of the School Adjudicator is likely to have cases, particularly those which are contentious, referred to it.

## What we found

We have examined the cases published by the Adjudicator over the past two years, the period in which the current Admissions Code has been in operation. Again, this examination gives us reassurance that the adjudication system is working as intended. The large majority of adjudications turn on relatively minor technical issues, not on any sense that an admissions authority is attempting systematically to manipulate a school's intake. More complex cases examined by the Adjudicators, the results of which may

have the effect, whether or not it also has the intention, of distorting a school's intake, tend to hinge on ambiguities in the Admissions Code, rather than on the work of OSA. Two main themes have emerged from this work in recent years.

- The use of complex 'points' systems by some admissions authorities for admissions. These are usually used by faith schools. These reward parents for carrying out work in a church or other place of worship. While the use of criteria relating to religious observance is lawful for gaining admission to a school of the faith concerned, criteria related to providing practical support to a place of worship are not. However, it is not always clear which category a particular criterion or activity used by a school falls into. Guidance on this should be provided by faith authorities (such as the local diocese.) However, this guidance is at times silent on the criteria used by local schools, and the potential for confusion, or for parents being put off from applying, therefore continues.
- Primary schools giving preference to children who have attended their nursery provision. Adjudicators have reasoned that this can discriminate against children wanting to move into such a school for compulsory education, having not previously attended (non-compulsory) attached nursery provision. In some cases, it could be argued that using this admissions criterion imposes a de facto age of compulsory schooling for a child of two years of age, on parents who want to send their child to that school at 4, the usual age of entry to Reception year. In addition, some of the relevant nursery provision has a paid element, which adjudicators have reasoned discriminates against those who are either unable or unwilling to pay. In her most recent annual report, the Chief Schools Adjudicator, Dr Elizabeth Passmore, called for the Department for Education to issue further guidance to schools on this matter.

There have a number of cases relating to the reference criteria used by schools which use pre-entry 'banding' as part of their admissions criteria, and whether using (for example) national performance on a particular test as a reference point potentially leads to a skewed intake to the schools concerned.

On the issue of reference criteria for banding tests, we consider that the fairest reference point should be a child's attainment in the relevant test (i.e. taking 10% of places from each decile of scores from the test). We consider that any other reference point, including the use of national attainment levels, would be likely to lead to a skewed intake to the school concerned, even if this is not the intention.

It should also be made clearer to all state funded schools that children in care, those recently adopted, and those with a Statement which names the school, are already legally required to be at the head of any queue for admissions in an oversubscribed school. By law they should, it follows, never be asked or expected to sit pre-admissions banding tests, given their priority in cases of



oversubscription is already spelled out in the statutory Code.

**We recommend that the Department for Education, in consultation with OSA, issue further clarification on the differences between admissions criteria based on religious observance, which are lawful, and those based on providing practical support, which are not.** Using the latter criteria could be viewed as amounting to charging a fee to apply to the school, albeit ‘in kind’ rather than in cash.

OSA should seek consensus from faith bodies on the differences between these sets of criteria, drawing on existing good practice already in existence in many faith schools in England, and should ensure its guidance aids those schools’ practices to remain within the statutory admissions code.

## 2. Lawful criteria incorrectly applied

### How the system operates

The administration of admissions is coordinated by local authorities on behalf of all schools in their area, using the criteria published by individual schools. Such criteria must be seen to be objective and transparent. If a parent feels that this work has been carried out incorrectly, they can appeal to the school's admissions authority. In increasing numbers of schools, the school and the admissions authority are one and the same. The admissions authority, on receiving an appeal, must convene an independent panel to review the case and to assess whether admissions criteria have been applied correctly. Case files for admissions appeals are not routinely published. However, every local authority is required to submit a report annually to the OSA which includes statistics on the number of appeals they have handled. Only one local authority (the London Borough of Lambeth) did not do this in 2013. Local authorities are also required to publish these data, although it is not clear how many do so. OCC attempted to identify these data on the websites of a sample of local authorities, with limited success. OSA has shared this with OCC to aid in our work for this investigation.

Numbers of appeals against admissions decisions vary considerably from one area to another across England. Given the complexity of the country's geography and the fact that in some areas there is less pressure on places and a greater likelihood of a child gaining a place in their first preference school, this is not surprising. In this study, we examine appeals which are actually heard by an independent appeals panel, rather than those which are either withdrawn, or settled before reaching a panel. Those in the latter category are in the majority.

### What we found

Some areas have markedly high numbers of appeals heard by panels, as compared to others. For example, in 2013, appeals panels in Middlesbrough heard 109 admissions appeals, whereas panels in Redcar and Cleveland, a neighbouring authority of similar size to Middlesbrough and with a similar range of schools and socio-economic spread of communities, heard only five. Similarly, 553 appeals were heard in Kent, compared with 134 in Essex – again, these are neighbouring large shire county authorities, with a similar number of schools, and a similar spread of types of schools and socio-economic profiles across their communities. Both authorities contain grammar schools and operate selection at age 11.

The success rate for admissions appeals varies considerably from place to place. 63% of appeals heard in the borough of Sefton were upheld, but over the period examined there was a success rate of only 3% in the London Borough of Brent.

There are several potential explanations for these discrepancies in both numbers of appeals and success rates. These could be as follows. However, given there has been no formal national analysis of the reasons for these differences, the following points are based on professional judgement and long term experience of the system, both in localities and nationally, within the professional staff of the OCC. We set them out here as a potential starting point for future investigations of this subject.

- The admissions system may be managed more effectively in some areas than others, meaning it is possible that administrative errors are more likely in some authorities than in others, leading to higher numbers of appeals.
- Parents in some areas may be more likely to complain than those in others if they do not receive a place for their child at their family's school of first preference.
- Varying demand for school places in different areas may mean that there more parents in some areas do not receive a place at the school of their choice than in other areas of the country.
- Different types of school and their admissions practices or over subscription rates may lead to more appeals overall and more successful appeals, than in other areas or types of schools. Areas with larger numbers of the relevant sought after types of school could therefore have higher rates of appeals.

The system for appeals is clear, supported by statutory guidance and processes, and appears from our analysis to be transparent. If a child is unfairly treated, there are clear ways in which redress can be sought by any interested party. Equally, as admissions criteria are published in advance and in most cases are as clear and objective as the statutory Admissions Code requires, the grounds for appeal should be relatively simple, and decisions about appeals will generally be made on equally objective grounds.

Moreover, as we examine elsewhere in this report, if a school really intended to manipulate its intake, there are other methods which are more likely to succeed than attempting to circumvent a nationally rule-governed and statutorily bound admissions system which is so closely monitored, and where necessary, just as robustly policed.

However, the system depends on all the processes involved in it being as clear and accessible to parents as they are to those working professionally within the education system and its administration. If they are inaccessible, might be seen to be intimidating for some parents, or are for whatever reasons difficult to understand, it is hard to see how justice can be served if an admission process or practice is then called into dispute. In the course of this investigation we have not been able to examine this issue in

detail. However, we intend to do so in 2014–15. This planned work is described in more detail below.

We have identified two areas of the system in particular which may result in the denial of rights to children affected by them, and therefore their families.

Many of those working in the system and who hosted field visits or gave evidence over the course of our formal Inquiry in 2011–13, repeatedly and consistently reported to us that there was a risk that admissions appeals panels were not as truly independent as they need to be. This, they insisted, is the case for appeals panels concerned with all schools. Panels for appeals in maintained schools are recruited, trained and assisted by the Local Authority against whom any appeal will be brought. This creates the potential for suspicions about independence, whether these are justified or not.

However, the situation is still less clear, and potentially rather more worrying and open to question where schools are their own admissions authorities. Members of the appeal panel for such schools are not permitted to have a connection to the school in question. They can, however, be employees of the Academy Trust or chain to which the school belongs or of a diocese or related body, or be associated with another school in the diocesan family, the Academy Trust or chain. These panel members may not be seen, at least by the external viewer or the appealing parent or family, to be truly independent.

Secondly, for maintained schools, LGO acts as a ‘backstop’ in the system. If a parent or carer feels that an admissions appeal in a maintained school has not been managed properly, they can complain to the LGO. This is not the case for other schools, where parents must make a complaint to the Education Funding Agency (EFA), an executive agency of DFE.

**We therefore recommend that the Local Government Ombudsman be given jurisdiction to examine admissions appeals for all state-funded schools. This would ensure that all parents or carers had access to a consistent route for further appeal, regardless of the school they attend. It would also ensure consistency with the remit of the OSA, which has jurisdiction over admissions arrangements for all state-funded schools.**

We consider there is also a potential conflict between the working of appeals panels and that of the OSA. It is legitimate, and permitted, for a parent or carer to bring an appeal against an admissions decision on the basis that they believe a school's admissions criteria to be unlawful. In this case, the panel must make a judgement on whether they agree with the lawfulness of the criteria. If they decide they are unlawful they should refer the school to the OSA, as well as ruling on the individual case. It is unclear what happens should the OSA then take a different view from that of the appeals panel, and decide that the admissions criteria were in fact lawful. This could lead to children losing out on a place at a preferred school, given the time taken between local and national judgements and the likelihood of the child being placed elsewhere during the elapsed time. Because case files from appeals are not routinely published, and OSA decisions do not state whether any referrals were made on the basis of a successful appeal by an individual, it is not clear whether the case described here is a hypothetical risk, or one which is an issue in real cases.

**We therefore recommend that OSA examine this, and take appropriate steps should it prove to be a significant issue.**

### 3. Dissuading parents from applying

This third area has been the focus of most of the accusations made to OCC as part of our formal Inquiry, which has led to the commissioning of this investigation and the publication of this report. These accusations focused on:

- schools making the parents of certain children feel unwelcome
- schools making them feel their applications for a place were misguided or not in the best interests of their child
- schools intimating at the pre-application stage, often informally, that any application for a place would be turned down.

#### **What we found**

##### ***Primary research***

As a result of these accusations, and in order to ensure that academic rigour was applied to finding evidence either supporting or denying the accusations, we commissioned the NFER to conduct the research set out above.

It is important for OCC to be clear at the outset regarding the scale of this research, and what it can and cannot tell us about these issues.

In order to recruit those with evidence to contribute to the study, the NFER undertook substantial work to attempt to find relevant parents and carers, as follows.

- A dedicated project webpage was created on the NFER website detailing the aims and objectives of the work and how prospective participants could register their interest in becoming involved.
- A unified social media recruitment campaign was used to channel interested parties to the project webpage.
- Brief details were posted on NFER's Facebook page and Twitter account.
- A recruitment call was also made via two online parenting forums (Mumsnet.com and Netmums.com).
- Intermediary organisations working with children and families were approached by the research team and asked to share the project webpage/details via their practitioner networks, and where possible, directly with parents and carers meeting the research criteria.
- Emails and phone calls were sent to a total of 78 local authority and third sector services (e.g. school admission teams, family information

services, school choice advice services and ethnic minority and Traveller achievement services) who were asked to share the project webpage/details with families.

- Details were also promoted through NFER Direct, a monthly electronic newsletter with around 12,000 subscribers and the Team Around the Child (TAC) practitioner bulletin with over 14,500 subscribers.

Despite all this recruitment activity, only 41 individuals came forward (24 parents and carers and 17 practitioners), of whom 16 were selected for interview.

Given this low take-up of a very broad call for evidence, we consider it is unlikely that there are large numbers of parents in England who are placed in this position.

It is equally important to note that the parents who did come forward were, without exception, the parents of children with Special Educational Needs (SEN.) Other vulnerable groups' parents and families did not respond, and neither did parents or families of children without SEN.

This research was therefore conducted on a small scale. It is impossible to say, from this research alone, what the full extent of the issues with which the nation is dealing actually is. It is of course possible, although we consider it unlikely, that NFER spoke to the only parents in England to have been dissuaded from applying to a school by that school. However, given that the researchers' extensive efforts to speak to more parents did not result in a large number of respondents they could have interviewed, we equally consider it unlikely that these practices are all-pervasive, or rife, in the way some people have consistently claimed to us that they are.

This research, inevitably, cannot give a definitive answer to the scale of the issue. It does, however, give a valuable insight into the experiences of some parents, and the impact that some schools' behaviour has had on them, and more importantly for us at the OCC, their children.

Practitioners working with children with SEN gave a consistent view as to why this issue might be particularly pertinent to parents and carers of these children, in contrast to the many other vulnerable groups of children in schools across the country. It was suggested to the researchers that parents and carers of this group of children are more likely than families of other vulnerable children to visit secondary schools to assess the suitability of the environment, and to discuss with staff how the school would support their child's specific needs.

One practitioner said, of children with SEN and their issues over admissions:

*With these children it's not always appropriate to go to school open days because the kids quite often don't like crowds so open days aren't necessarily the best time to see a school. Most of the schools will arrange a separate visit and its often in these separate visits, these more one-to-one or family visits that you get a head, or a SENCO, or a fairly senior member of staff usually saying: 'oh look, between you and me, this isn't the best place for your child, they need somewhere*

*smaller, this is an enormous school'. Just in quite an underhand way, discouraging people from applying. But every school is saying the same thing – so where is the right place for these children?*

Another said:

*I think it's the children with SEN, who would experience this type of discrimination most, right from the outset. If you've got a statement with quite significant needs, no one wants to touch you with a barge pole. Despite the fact that schools have the pupil premium, SEN budgets and the funding that comes with the statement, they just don't want the hassle, they just focus on the 5 A-C students, the ones that can bring the results and get them up the league tables.*

Practitioners were also keen to point out that, while conversations with schools may have had the effect of dissuading parents from applying for a place, this may not in fact have been the school's intention. Schools can be very honest about the challenges they might face in trying to educate particular children, without the school actively wishing or intending to turn them away. Such matters of different interpretation by staff, parents and others are vital in understanding. They are threaded throughout the research that was undertaken to underpin this report.

While some of the practitioners in the study were aware of interactions which could be considered as being 'discouraging' between school staff and the parents and carers of vulnerable children, they had rarely been present during such exchanges. They were therefore unable to corroborate what was said, and by whom. They were keen to emphasise that where such conversations do take place, reports back to them of what took place depend very heavily on the interpretation of the meeting by a parent or carer, regarding what is actually meant when comments are made by a member of school staff. It is also possible that cases go unreported, as some families may be unaware that a school is attempting, for whatever reasons, to discourage them from seeking admission.

Practitioners also suggest that parents and carers of vulnerable children have often faced battles to have their child's needs met. They are, inevitably, keenly aware of, and understandably sensitive about and on the alert for, anybody not agreeing to try to meet their child's needs. This could lead some parents or carers to focus on elements of conversations with school staff that they have perceived as negative, whilst overlooking elements that were also present, and were encouraging. It is equally possible, these practitioners pointed out, that, where parents and carers perceive a school to have discounted the possibility of a child's admission, this outcome may not have been the schools' intention. In some cases, school staff could legitimately be acting in the interests of the child, where they feel the choice of school is inappropriate for that child. By not informing parents and carers about the potential difficulties their child may face, or by being ambiguous rather than clear about the potential challenges, they may consider they would be actively misleading them and acting unprofessionally.



One practitioner told researchers:

*I think it's quite reasonable for schools to say, 'we don't have many Traveler children, or autistic children, or EAL children at the school and we know of other schools in the local area which do, have you considered applying to those?' As a parent I'd want to know that, I wouldn't see it as discriminatory, but some families, who face prejudice on a regular basis, might perceive it like that*

Another said:

*The parents of an autistic child looking round a school which had a very large site and a large intake of pupils might be told that a smaller environment might be more suitable. Is this discouraging someone or helping a parent make an informed decision? That would be around a parent's interpretation.*

Evidence from parents, carers and practitioners alike suggests there is wide variation in the extent to which mainstream secondary schools in particular present themselves as inclusive and supportive of vulnerable individuals or groups.

The ethos and approach adopted by any school forms a set of sometimes clearly, sometimes more subtly coded messages, all of which can influence parents' and carers' decision making and either deter or attract them. Essentially, it appears from the researchers' accounts gleaned from these parents' reported experiences that there are mainstream secondary schools which potentially 'game' the admissions system by simply not being encouraging of admissions of particular groups or types of vulnerable children. This might, from the research evidence the NFER gathered, take the form of schools:

- not responding to particular families' requests to visit
- not having key members of staff available at transition events for parents and carers to speak to
- emphasising the skills and attributes of particular groups of children and not others when they speak to parents and carers.

Again, it is unclear whether these observed behaviours represent the explicit, or implicit, intention of schools when they promote themselves to potential parents, and potential pupils. Nevertheless, our researchers found that they represented key factors in some families' decision-making when applying for a school place. They could be, and in the families our researchers worked with they had been, an 'under the radar' and implicit rather than explicit approach adopted by some schools to dissuading particular families.

In essence, whether or not it is their intention, such schools' behaviour has this dissuading effect on some parents. One such parent told researchers:

*Somebody recommended [the school] to me as it has a school action plus unit. I called them and explained the situation with [my daughter who has SEN] and asked to visit the school. They said they would try and a month later someone called and asked for more details. I have called twice and they still haven't got back to me about a date for a visit. I'm taking that as they are not pushing the visit at all. They put you off but don't tell you explicitly what the reasons are.*

Another said:

*There is one school in our area that is getting a very good reputation for managing children with autism. When I went to see this school I discovered that the learning support unit was closed on the open evening and none of the staff were there. When I asked why it wasn't being manned so that we can ask questions about it I was told that the learning support teacher had been told not to be there on the open evening because they didn't want to encourage any more children with autism to apply. There is no incentive for school to do this well and every incentive for them to discourage any child that represents a problem and might use up additional resources.*

However, NFER researchers also spoke to parents who described actions by the schools they had approached which were much less open to a benign interpretation.

In some children's cases, it was suggested by parents that some secondary schools were overtly and very explicitly discouraging, either relying on parents' and carers' lack of awareness of the admission process, or playing on their emotional responses to being discouraged. This included, for example, cases discussed with the researchers of schools informing the parents and carers of vulnerable children, prior to any formal admissions application being submitted, that the child would not be admitted. They made this clear without giving a valid explanation as to why a refusal to admit would result. Parents of children with SEN reported they were also, and equally unlawfully, either required or 'strongly encouraged' to attend a pre-admission selection interview with the school, prior to completing or submitting a formal application. As set out below, OCC has identified one school which sets out such an expectation on its website.

These parents, interviewed for the research, said they knew of some secondary schools which actively discouraged parents and carers by suggesting the school was unable to meet the specific needs of their child, without any prior assessment of those needs as part of the pre-admissions process. Some schools were said, by parents giving accounts of their or others' experience, to use the fact that a pupil had a statement of SEN as a means of deterring families, by suggesting they were unable to meet the requirements of the statement.

In other cases, some parents and carers of children with SEN but without a statement informed the researchers that they had been told that because their child would not receive any additional funding, the school could not put any interventions in place to support them. Although these resource issues may

be real and the schools concerned may have been stating fact, practitioners interviewed for our research questioned whether or not the school should be making these decisions and advising families in this way, especially given they were doing so having not yet either met the child, or spoken to other professionals already supporting their needs.

One parent told our researchers:

*At a school we visited I was told that I would have to see the SENCO and was taken to an office with two people. I explained [my daughter's special] needs and how she works currently and I was told 'No, she wouldn't be accepted at that school'. That was the word 'No'. They just said they wouldn't be able to support [my daughter] and it was that blunt, 'No'. The school take the kids that are expected to get to university, that's their goal but at the expense of what children? I do believe there are schools that are selecting children to get the right figures and numbers*

Another said:

*I explained [my daughter's] learning and the situation and that she has memory lapse, she has ADHD, she can't sit still and that's why she has one-to-one. I asked the school if they could take her and they just said 'Ooh, ahh, we're not sure how she will fit in, her learning is not really good enough for her to be accepted into the school'. I asked if they actually meant that [my daughter] couldn't go to this school and they said, 'She wouldn't be offered a place because we can't meet her needs'. I thought, 'You made that decision based on just a ten-minute conversation.'*

Another told researchers:

*When I went for the first visit to go and have a look at it, the lady made it clear as day and [my son] just wasn't going there. It was very unfair for them just to look at him in that one instance; he'd never been in that situation before. She took one look at us and she made that decision, 'No he's not coming to this school, he wouldn't be able to cope, he would struggle. It might be best if he didn't come here. He'd be better off at a special needs school rather than here' She made that decision without involving anyone else – just made that decision by looking at us. This really upset me. I thought if they are going to do that by just giving you a look then is it worth him going to that school? I don't want to put him somewhere where he isn't going to be happy.*

Finally, one said:

*...went to visit the school, eventually this lady came out, she was apparently the finance manager which makes a lot of sense really because the first question she asked me was is my son funded? I said to her, 'It's not my son, it's my daughter I've come to look round for' and she sort of went, 'Oh right, never mind. Is she statemented? Is she funded?' and when I said 'No' from then on she wasn't very positive at all. When she knew she wasn't funded, I got the feeling they didn't want [my child] there. She said to me, 'Oh no, you won't get transport*

*here and you won't get this and we do have a section for severely disabled children but [your daughter] wouldn't fit in that category and you won't get the support'. I thought this is an all singing, all dancing brand new school, state of the art, all my families children have gone to there, but because of the way she dealt with me I wouldn't ever send my child there. Fancy saying to me, 'I think you need to send her to a special school without even meeting her.'*

The parents and carers included in this small-scale study indicated clearly that they had all been put off from applying for places at certain mainstream secondary schools as a direct result of their conversations and interactions with staff during the period any family goes through in making a choice of secondary school for their child. Many were clear they felt let down by the very limited remaining school options available to them, and more importantly, their child.

Some families in this situation had applied for places at other schools which they considered distinctly 'second best' in terms of their academic performance, facilities and location. Others, who were clear this choice was made reluctantly and as a last resort, educated their child at home.

Some parents and carers of children with SEN working with our researchers reported that despite receiving confirmation from primary school teachers and other professionals that their child would be able to access mainstream secondary school and succeed there with the right support, they ended up selecting a special school for their child. As a result of being dissuaded by certain mainstream secondary schools from applying for a place, these parents felt they had no other option but to send their child to a special school even though they felt this provision was not appropriate and both the child and the parents wanted mainstream options and an education alongside their peers. This is not to say that the choice of a special school is necessarily a 'second best' option for many children. We would make it clear here that some parents and children make a positive, and appropriate, choice for a place and an education in a special school. This was not the case for these parents. Their choice, and that of their children, was in effect denied, or made for them.

Alongside commissioning the NFER research project quoted extensively above, we have examined a wide range of other evidence. Some of it may be seen to suggest questionable activity by some schools, which has the effect, whether intentional or unintentional, of improving the attainment and social profiles of their intake, and by doing so, turning others away.

### **High costs for uniform**

Numerous credible stakeholders, including head teachers, chief executives of third sector organisations and senior local government officers had reported to OCC over the course of our formal Inquiry in 2011–13, that some schools, particularly at the point of secondary school admission to year 7, deliberately

set the price of uniform and other equipment which a child must have in order to attend, extremely high. These witnesses indicated this was done as a covert way of dissuading children from less affluent families from seeking to gain admission. Those telling us of their opinions included numerous serving head teachers and local authority officers. This behaviour by schools would be contrary to non-statutory guidance from Government, which states:

*Schools should give high priority to ensuring best value in the cost of school uniform. No school uniform should be so expensive as to leave pupils or their families feeling unable to apply to, or attend, the school of their choice. Schools should aim to limit the expense of uniforms by keeping compulsory branded items to a minimum and by ensuring that most items of uniform are widely available in high street shops rather than through a single supplier (DfE, 2013b).*

Section 1.8 of the Admissions Code also states that:

*Admission authorities **must** ensure [...] that other policies around school uniform or school trips do not discourage parents from applying for a place for their child (DfE, 2012).*

While we do not know whether such behaviour sets out to dissuade parents from applying, it is certainly the case, from publicly available documents published by the schools concerned, that some state funded secondary schools have uniforms which would be outside the financial reach of many parents.

### **Case studies**

**School A** is a secondary Academy in London. Its uniform requirements are set out publicly on its website.

The compulsory uniform includes branded items totalling a minimum of £250, which must be bought from a single, explicitly named supplier. The items every pupil must have include two separate sports kits. Shirts, school trousers, skirts and shoes are not included in this £250 total, meaning that the total cost of uniform for a child at this school is likely to be around £300.

Should a child be selected to represent the school in a sport, additional sports kit must be purchased.

Separately, school A states on its website that, in advance of applying for a place at the school, parents of children with SEN will be 'invited to book an individual appointment with the head teacher and the SEN Co-ordinator to discuss provision for your child'. Ofsted's data dashboard (Ofsted, 2013) for this school shows that, at the time of writing, there are currently no children at the school with SEN at 'School Action plus' level, or with a statement of SEN.

**School B** is a secondary Academy in the South East of England. Its uniform policy is set out on its website. All uniform and equipment items must be purchased directly from the school. The minimum necessary items of uniform total £291 per child. Any other items, such as scarves or school beanie hat are additional to this sum.

To give an indication of how the practice of insisting on uniform from a particular supplier adds to the overall cost, we have carried out a comparison of costs by item. Both schools A and B charge more than £40 for their school blazer. By contrast, a blazer can be bought in the supermarket looked at for this comparison for £10. School trousers at school B cost £19.20. One leading supermarket charges £3.<sup>8</sup>

While we appreciate that schools want to ensure that pupils have high standards of appearance and are smart and ready to learn, we do not consider there is any good reason to insist on parents or carers buying items for more than four times their market value, or for restricting the places from which they are bought if they could be purchased elsewhere and serve the same purpose. Even if it is not the intention of the school, it is reasonable to assume that the costs involved in sending a child to schools A or B may have the effect of putting off parents on low incomes from applying. It is also at odds with Government advice on this issue. Most importantly, these schools uniform policies appear to be in contravention of the Admissions Code. That both schools indicate in their publicity materials that they consider themselves Comprehensive in nature and intake, and that they are assumed to be funded to be so, is not supported by the analysis of costs given above.

### **Data on school intakes**

We have identified trends in nationally available data which indicate that there are much bigger differences between the intakes of some schools than would be expected given their geographical proximity to others of a supposedly similar type, and their published admissions criteria.

We have examined publicly available data on the demographic characteristics of different secondary schools' pupil populations in a small number of areas which do not operate academic selection. These were chosen as being the areas of the country which had the highest levels of competition for, and pressure on, school places.

We have examined:

- the proportion of pupils from disadvantaged backgrounds (those looked after by the state or eligible for free school meals)
- the proportion with special educational needs

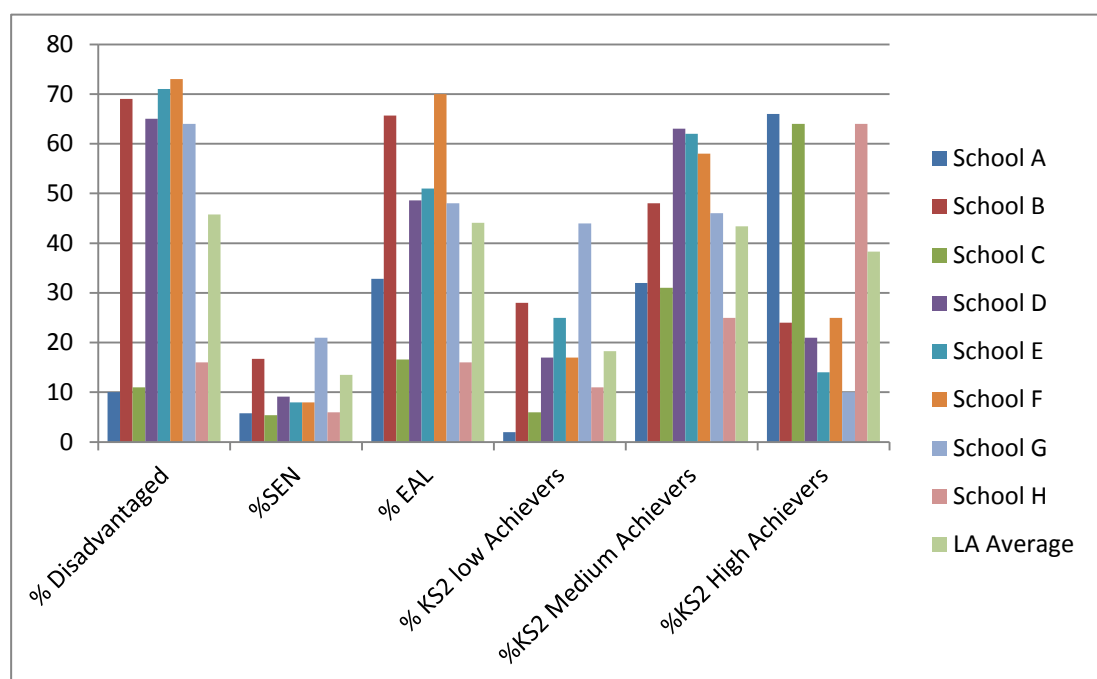
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<sup>8</sup> Price comparison carried out at Asda online on 28 March 2014.

- the proportion of pupils with English as an additional language (EAL)
- the attainment of pupils prior to attendance at the school (DfE, 2013c).

Consistently, we find that in each area there are one or two schools with a very high proportion of those perceived to be the ‘more attractive’ pupils (i.e. there are low proportions of disadvantaged children, children with SEN or EAL, and equally there are disproportionately large numbers of children for their demographic area who were high attainers at primary school) and one or two schools where the opposite pattern pertains. Often, the schools concerned are geographically very close to each other, and have published similar, if not identical, admissions criteria.

For illustrative purposes, Figure 1 shows these data for one London Borough.



Source: DfE (2013c)

No schools in this authority operate academic selection, but are all Comprehensives. There are three faith schools among the authority’s eight state-funded secondaries, and four Academies. Two newly-opened Free Schools have been excluded from the table above, as they have not been in operation for enough time to provide the relevant data.

As is shown in the graph above, School A has disproportionately low numbers of ‘difficult’ pupils compared with the local authority average, and conversely, equally disproportionate numbers of children who had done well in Key Stage 2 SATs.

By contrast, School G has very high numbers of disadvantaged children, those with SEN or those with English as an additional language. It also has a high number of pupils who did not achieve the expected standard in Key Stage 2 SATs. School A and School G are less than one mile from each other in the same borough. It is therefore surprising that their Year 7 intakes should

be so starkly different. While these are extremes in this single authority, other schools in the graph above, in the same borough, also appear to have very different proportions of disadvantaged pupils on their rolls from each other, despite their very close geographic proximity.

Similarly disproportionate results have been seen in every authority whose data we have analysed, using the same publicly available data sets as are shown above.

There could be several reasons why these differences may occur. They may be a reflection of the different spreads of applications received by the different schools. One school, for example, may attract more applications from 'attractive' pupils than the other. However, as annual demographic data on applications for and admissions to school places is not currently collected and published, it is impossible to confirm whether these circumstances explain the differences between the schools concerned, which seem from first glance to be similar to each other in most other ways.

Admissions criteria may not be accurately applied from school to school in cases like this, to the detriment of those children whose families are probably less likely to appeal an unfair decision. For the reasons set out above, we consider this unlikely to the extent that would explain the significant differences in these schools' intakes. However, where it does, it is important that this issue is addressed swiftly, and with consideration to those children who may have also lost out, but may not have appealed.

Moreover, some schools which appear to have unusually 'good' intakes have also had their admissions arrangements changed as a result of judgements by the Office of the Schools Adjudicator. This has happened on several occasions with School A above.



## Conclusions

In the final analysis, it has not been possible to identify definitively whether some schools are routinely, systematically and deliberately seeking to manipulate their intakes by working to dissuade certain parents or carers from applying for a place for their child. This issue was the reason for picking up and following this consistently strong thread of claims and assurances given to our Inquiry in 2011–13.

However, we have identified a number of issues which lead us to believe that further, far larger scale, we would hope conclusive research on this issue is justified.

**Firstly:** We know that, regardless of whether this has been schools' intention, there are parents, especially those of children with SEN, who *have* been put off from applying to a school for a place for their child as a result of the negative messages they have received directly from school staff. NFER's research for this report leads us to believe this issue is not rife across the school system, and is unlikely to be an issue for the majority of parents. However, the very small number of cases that we were presented with are unlikely to be the only cases in existence. That every child deserves the chances given to most, is a truism we consider bears repeating here. That some are denied it is therefore a great shame and should be addressed.

**Secondly:** We know from their own websites and other materials that a small number of schools do in fact operate contrary to government's clear advice to keep uniform and other costs to a minimum so as not to discourage parents whose incomes may not stretch to cover costs if uniform and other equipment are expensive. We consider it is reasonable to assume this may be a factor in the decisions of less affluent parents regarding which school to apply for. Again, this is happening whether or not it was the school's intention to profile its intake on the basis of income.

**Finally:** We know that, despite the Government's desire that all children and young people should have equal access to the most popular schools, this is not yet the case. Schools in very similar circumstances and less than a mile apart in the same boroughs, as shown in data published by government and Ofsted among others, are clearly shown to have very different intakes.

While the issues we discuss in this report are unlikely to affect large numbers of children, the education of each individual child is still important and deserves to be treated as such by all concerned, not least through the workings of the admissions system. The issues we raise here also serve to identify potential gaps in the accountability system that require further examination.

**We recommend that further large-scale, national, quantitative and qualitative research is required in order to understand the specific nature and scale of inequality in admissions outcomes, and the reasons for this. Such research should be made a high priority for the Department for Education’s future programme of commissioned research.**

## **Equality concerns**

Schools and other bodies providing education have duties under the Equality Act 2010 to ensure proactively that their activities do not, either directly or indirectly, discriminate against people with a range of ‘protected’<sup>9</sup> characteristics. This duty goes beyond ensuring that they do not directly act with the intention of discriminating against these individuals. They are also under a positive duty to ensure that what they do does not have this unintended effect.

This is reflected in the admissions code, which states that admissions authorities must:

*ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs (DfE, 2012).*

In other words, it is the effect of the school’s actions which matter, not their intention. Given the issues set out above, this remains relevant to the work of all state-funded schools’ admissions authorities.

**We recommend that admissions authorities, as part of the regular reviews of their admission arrangements, which they are required to undertake, conduct an assessment of the extent to which existing arrangements meet their duties under the Public Sector Equality Duty (PSED). They should examine the characteristics of those who apply to their school, in comparison with those of their local area, and consider what more could they do to encourage applications from under-represented groups, for example (for secondary schools) by extending outreach or transition work to different local primary schools. They should also examine whether any of their actions may have the effect of dissuading particular groups from applying. Examples may include uniform which is prohibitively expensive to those on low incomes, or a refusal to provide materials in languages other than English.**

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<sup>9</sup> These are: gender, disability, sexuality, gender reassignment, marriage and civil partnership, pregnancy and maternity, race and sexual orientation.

At present, no information is collected, or therefore published, on the characteristics of those who apply for places at a school. This means that it is impossible to compare the 'success' rates of different types of people in gaining a place at their first choice school. It also means that we have no way of knowing whether the intake of a particular school accurately reflects the applications they receive.

**We recommend that, as part of their work co-ordinating admissions, Local Authorities should be given powers to collect such (anonymised) demographic information alongside school applications.**

### **Legal ambiguity**

A separate and complicating issue is that the law is ambiguous on whether or not schools can act to dissuade admissions applications from certain parents. While the vast majority of those involved in education would agree that this is unethical, and that it is clearly contrary to the spirit of the law around school admissions, it is unclear whether it is actually unlawful.

This ambiguity has a number of implications. It means that there is no clear course of redress for parents to whom this has happened. It also means that it is harder for those wishing to uphold the integrity of the system to hold to account schools which act in this way.

**We therefore recommend that the Department for Education issue a clear statement on whether or not it is lawful for schools to act in a way which dissuades certain parents or carers from applying for a place at the school. Should legal advice indicate that this is currently lawful, urgent steps should be taken to amend the law accordingly. Being dissuaded from applying to a school should become grounds for appealing an admissions decision, and appeals on this ground should be treated in the same way as other appeals.**

### **Response to recommendations**

Under the terms of the legislation governing the Children's Commissioner's work, public bodies to whom we make recommendations are required to respond to those recommendations in a timely manner. We therefore request a response from the Department of Education, the Local Government Ombudsman and the Office of the Schools Adjudicator to the recommendations in this report by 25 June 2014. This response will be published by the Children's Commissioner.

### **Areas for future work**

This project has been a relatively small-scale examination of issues regarding the admissions system brought to our attention during our inquiry into school exclusions. As such, we have not been able to examine the full extent of

admissions activity and its fitness for purpose.

In addition to the specific recommendations made in this report, we recommend that priority be given to further examination of the following issues.

***The working of the system for in-year admissions***

Large numbers of children move between schools at times other than those covered by the 'normal' admissions round. A disproportionate number of these are from vulnerable groups such as looked after children, new arrivals to the country and those who have been excluded from other schools. All these groups are disproportionately likely to have SEN, be from minority ethnic groups and from low-income families (Office of the Children's Commissioner, 2012). There is no reason to believe that the issues we have identified with the messages some schools give to parents thinking of requesting a place would be different in these cases. We therefore recommend that work be undertaken into the extent to which children's rights are protected through this process.

***The efficacy of the complaints system for schools***

The accountability system for complaints about admissions is reactive and largely based on an assumption of reasonableness. Those involved in it have repeatedly referred to a 'self-policing system'. It is reliant on complaints and formal appeals to draw attention to issues. This means that no action is taken until after the fact – when children's rights may already have been compromised. There is no system of inspection or audit of legality (as happens – through Ofsted – for most other elements of a school's provision). Admissions appeals also do not set a precedent – only the case of the child who appeals is considered. Admissions authorities do not then need to examine whether other children also lost out unfairly, but did not appeal. The smooth working of this system therefore relies on complaints systems being known to potential complainants; being accessible to these complainants and working as intended when complaints are made. If complaints systems are opaque and inaccessible, this becomes problematic. OCC intends, in 2014–15, to conduct an investigation into the complaints systems for schools, with a view to identifying whether these systems work to protect children's rights. This will include, but not be limited to, admissions issues.

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