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Originally published in Educational management and administration, 29 (4). pp. 459-473 © 2001 SAGE Publications.

You may cite this version as:

West, Anne & Ingram, Dabney (2001). Making school admissions fairer? 'Quasi-regulation' under New Labour [online]. London: LSE Research Online.

Available at: <http://eprints.lse.ac.uk/archive/00000215>

Available online: April 2005

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**Making school admissions fairer?
'Quasi-regulation' under New Labour**

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Abstract

This paper examines reforms to secondary school admissions in England since 1997. In particular, it focuses on the new ‘quasi-regulation’ that has been introduced to make the process of admissions fairer and more transparent. Our analysis reveals that the quasi-regulation has had some impact on the process of admissions to secondary schools. In a number of authorities with highly developed secondary school quasi-markets, the policy changes have resulted in some inequitable admissions criteria being removed. However, there are still problems with school admissions and policy recommendations about how the system can be made fairer are presented.

1 Introduction

Concern has been expressed about secondary school admissions in England. Legislation enacted in 1980 gave a much greater priority to parental choice than previously and as a result of the 1988 Education Reform Act open enrolment was introduced and schools were funded on a predominantly per capita basis. Thus the education reforms introduced by the Conservative Government in 1988 resulted in the introduction of a ‘quasi-market’ in school-based education. The term ‘quasi’ is used because the markets that have been introduced differ from conventional markets in a number of key ways. These are discussed in detail elsewhere (Le Grand & Bartlett, 1993) but in essence as with conventional markets, on the supply side there is competition between service suppliers – schools – and so competition between institutions for pupils. On the demand side, consumer purchasing power is not expressed in terms of money in a quasi-market. Instead it takes the form of an earmarked budget confined to the purchase of a specific service.

Taken together with the publication of examination results in the national press from 1992 onwards certain schools that were oversubscribed were, and are, theoretically in a position to ‘cream skim’ – that is select pupils that will maximise their ‘league table’ results. However, only schools that were both responsible for their admissions and those that were oversubscribed were, and still are, in this position. Schools falling into this category are foundation (former grant-maintained) and voluntary-aided (religious) schools (some of which were also previously grant-maintained).

This paper focuses on reforms to the admissions process that were made by the Labour Government that was elected into office in May 1997. Section 2 examines the previous policy context under the Conservative Government, some of the concerns raised in the literature about the admissions process prior to 1997, together with the legislative and policy changes made by the Labour Government. Section 3 focuses on a new form of ‘quasi-regulation’, namely the Office of the Schools Adjudicator, that has been introduced by the current Government in an attempt to make the process of admissions fairer and more transparent¹. It also reports on objections made to, and decisions by, the schools adjudicator. The final section discusses the overall legislative and policy changes that have taken place and their impact on equity; it also presents a number of policy recommendations that would serve to make the admissions process more coherent, transparent and equitable.

2 Policy context

Under the previous Conservative administration a variety of concerns were expressed about the administration of school admissions in various parts of the country. These included the lack of policy co-ordination and equity issues surrounding admissions policies and practices, particularly those used by the former grant-maintained schools (now mostly foundation) and voluntary-aided (mostly church) schools (see Audit Commission, 1996; Gewirtz et al., 1995; West & Pennell, 1997; West et al., 1997, 1998). These inequitable practices allowing pupils to be ‘selected’ or ‘selected out’ of schools, included the admissions criteria used in the event of a school being oversubscribed – e.g. the pupil’s interests, character, career ambitions – the use of pre-admission interviews of pupils and/or parents, testing procedures that result in an intake skewed towards higher ability pupils and application forms that seek information that is not related to the school’s admissions criteria (e.g. parents’ occupations). West et al. (1997, 1998) noted that there were a number of prerequisites for the admissions process to be transparent, predictable, equitable and accountable. Their recommendations included the following:

- parents need to have clear information about the secondary schools in their area and information on the likelihood of obtaining a place at these schools;
- the admissions process needs to be carried out in such a way that the procedure can be monitored or audited;
- interviews should not be used as they provide an opportunity for schools to ‘select’ and ‘select out’ pupils using a range of different criteria;
- the same general admissions process and timetable should operate across the country; and
- if testing is used to obtain a balanced intake, it should be carried out in such a way that decisions can be subjected to external scrutiny.

West et al. (1997) argued that selection exacerbates the problems associated with admissions and that, if it is used, it should involve written tests not interviews; they also noted for schools with a proportion of specialist places that there seem to be few arguments for the school selecting pupils – rather, parents should make preferences knowing that a particular specialism is on offer.

The Labour Party in its 1997 election manifesto committed itself to a fair system of admissions to schools: ‘We support guidelines for open and fair admissions...’ (p. 9). The 1998 School Standards and Framework Act and accompanying regulations set a new legal framework for admissions.

Associated with the legislation is a Code of Practice on School Admissions (which came into force in April 1999). This can be seen as an attempt to alleviate problems created by the development of a largely unregulated market as regards school admissions.

The 1998 Act significantly reduces the scope for partial selection by ruling out the introduction of new selection on grounds of ability other than by 'fair banding' (on the basis of pupils' attainment/ability) and allowing new priority on the basis of aptitude in limited circumstances. Under the Act, schools are permitted to select on the basis of ability (there are examples of up to 50%) if they were doing so in 1997/98 (there is no information on the number of such schools).

It also provides a new mechanism – the adjudicator – for resolving local disputes in relation to, amongst other issues, school admissions. It enables objections to partially selective admissions to be made to adjudicators by admission authorities and in the case of certain existing partially selective arrangements, by parents. It is important to note that the adjudicator has no remit in relation to the selection process in the case of grammar (fully academically selective) schools but its timing may be an issue before an adjudicator.

Key aspects of the Code of Practice relate to the provision of information for parents, the need for admissions policies and oversubscription criteria to be explained and for details of the numbers of pupils who applied and who were successful in previous years to be provided. The Code also makes reference to the need to consider standard application forms and common timetables and to monitor school admission applications so as to ensure that the process is fair and offers equal opportunities to all pupils. Specific reference is made to partial selection as shown in Figure 1.

Figure 1 Parents and partial selection (section 5.12 School Admissions Code of Practice)

Local parents or a local admission authority may make an objection to partially selective admission arrangements. Where such an objection is to the principle that the school is partially selective, the Adjudicator will need to consider whether the arrangements act in the best interests of local children, including those with special educational needs, and parents, or work against those interests; whether they disrupt the sensible and efficient provision of education locally; and whether they have a detrimental effect on parental choice.

Relevant pointers include whether:

- local pupils, who could otherwise expect to be admitted to a school, are in effect being denied admission
- other schools in the area are suffering adverse changes in their pupil profile as a result of the partially selective school ‘creaming off’ high ability pupils
- partially selective arrangements are causing significant difficulties for pupil placement across the whole area
- relatively high numbers of children are having to travel an unreasonable distance to school because of the pressure on school places in their local area caused by partial selection
- the LEA [local education authority] can show that partially selective admission arrangements are causing it difficulties in discharging its duty to ensure that there are school places available for all children in its area
- an already limited choice of school in isolated rural areas is being further limited
- children are being adversely affected, for example, because they have to sit a number of different tests to gain a place at a local school.

It is important to note that the Code is not always worded with precision. So for example, there is no agreed view of what ‘local’ means. There is also a problem with relating partial selection at one school to a specific effect (except in the case where there are only a small number of secondary schools in a given locality).

The Code of Practice addresses the issue of interviews stating that schools or admission authorities should not interview parents as any part of the application or admission process, although church schools may do so, but only in order to establish a person’s religion, including religious denomination or practice. Interestingly, the content and conduct of the interview can be used in any appeal against an unsuccessful application.

Thus the 1998 School Standards and Framework Act and Code of Practice provide a framework for school admissions. Although there are limitations on interviews, the fact that they can continue for religious schools still leaves the door open for social or covert selection to continue; moreover, no mention is made of interviewing pupils. Further, whilst any increase in partial selection on the basis of ability is also ruled out, it may continue where it currently exists. However, new selection on the grounds of aptitude for specific subjects is allowed in schools with a specialism so long as the

proportion does not exceed 10% of the intake. This is problematic as it does not appear to be feasible to differentiate between ‘ability’ and ‘aptitude’ and, therefore, such selection could still be used as a mechanism of selecting pupils on social grounds. As West et al. (2000) comment:

... there are difficulties defining what is meant by ‘aptitude’ and how it differs from ‘ability’. According to the Oxford English dictionary, aptitude is ‘a natural tendency; a propensity for something’ whilst ability refers to ‘mental capacity or cleverness’. One research study has examined how far tests designed to identify aptitude for technology at the end of year 6 (when pupils are 10 to 11 years old) accurately predict the results of public examinations (Coffey & Whetton, 1996). Whilst the test results showed a reasonably high correlation with performance in mathematics and science GCSE results, the correlation with technology results was not as high. *At present it thus appears that aptitude tests for technology are not sufficiently sensitive to differentiate a specific ‘aptitude’ from general academic ‘ability’.* [Italics ours]

We now examine one important aspect of the Labour reforms, namely the role played by the schools adjudicators. We examine objections made to the Office of the Schools Adjudicator, whether objections have been upheld and what the consequences have been, particularly but not only in relation to partial selection.

3 The Schools Adjudicator

Schools adjudicators were introduced under the 1998 School Standards and Framework Act and decide on organisation and admission arrangements that cannot be resolved at a local level. However, it should be noted that where an objection is concerned with ‘admissions criteria relating to a person’s religion or religious denomination’ (section 90, School Standards and Framework Act, 1998), it is the Secretary of State for Education and Employment, not the schools adjudicator who deals with the objection.

Adjudicators are appointed by the Secretary of State for Education and Employment and there is a chief adjudicator and 14 others. All are independent of the Department for Education and Skills (DfES) (until June 2001, the Department of Education and Employment). They include former members of the Funding Agency for Schools, former Chief Education Officers, inspectors from the Office for Standards in Education (OFSTED) and education consultants (see Office of the Schools

Adjudicator, 2001). Adjudicators thus have a role in relation to both school organisation and admissions.

Adjudicators are not allowed to intervene when they discover unlawful practices – thus be it in relation to parents not being able to express a first preference (section 86, School Standards and Framework Act, 1998) or admission authorities introducing unlawful partial selection (sections 99 to 102), or indeed any other practice, no intervention is possible unless a complaint has been made by a body legally entitled to do so.

Local education authorities and schools that are their own admission authorities (essentially foundation and voluntary-aided schools) can submit objections to the adjudicator. Parents of children in primary education can object to their local secondary school partially selecting some of its pupils on the basis of academic ability or aptitude for particular subjects. However, parents face two restrictions in their capacity to object: first, a minimum total of ten parents is needed in order to trigger any parental objection, and second, parents can only object if the arrangements have been in place and unchanged since the beginning of the schools year 1997/98. This is important since if an admission authority introduces new partial selection by ability (which is, in fact, unlawful) or aptitude (which is also unlawful if it exceeds 10%) only an admission authority can object to this. However, as it is not known how many schools were then partially selective or what there arrangements were at that time, it is clearly difficult to establish whether the selective admissions have changed or not.

It is also noteworthy that governing bodies of community schools, for whom the admission authority is the local education authority (LEA), cannot object to partial selection, even though it is likely to be such schools that suffer from any ‘creaming’ undertaken by schools that are their own admission authorities (foundation and voluntary-aided).

Objections to and decisions by the schools adjudicator

We carried out an empirical study to investigate objections to school admissions made to the Office of the Schools Adjudicator during the first 13 months of its operation (July 1999 to the end of July 2000). Details of objections were provided by the Office of the Schools Adjudicator and an analysis of decisions made was undertaken. The following sub-sections provide details of key issues to emerge in our analysis.

Location of admission authorities

During the period in question, the schools' adjudicator ruled on 57 objections relating to admissions. Objections were made about admissions policies in only a minority of LEAs. There are currently 150 LEAs in England and objections were made about policies in just 19 authorities (13%).

Objections related to admissions policies in different parts of the country as shown in Table 1. However, the vast majority were in London and in the South-East of England (excluding London). Whilst we have classified the South East of England as being the area where most objections arose, in fact the vast majority (23) were from just one shire LEA. There were other LEAs in which three or more objections were made about admissions - of these three were outer London LEAs (eight objections were made in one, four in another and three in the other) and one an inner London LEA (in which three objections were made).

Table 1 Area about which objections were made

Area of England	Number (%) of objections [N=57] [1]
South East England (excluding London)	27 (47%)
London	23 (40%)
Other areas	7 (12%)

[1] Percentages do not add up to 100 because of rounding.

Interestingly, these were almost all in LEAs where there was a 'highly developed' market in operation (West et al., 1998). By this we mean that there are within the LEA a variety of school types: these may include foundation schools, voluntary-aided schools, fully selective schools, partially selective schools and so on.

Who made objections?

Objections came in the main from local education authorities as shown in Table 2. However, in a significant number of cases another school (or schools) objected (33%) or a group of at least ten parents objected (23%).

Table 2 **Types of objectors**

Objector	Number of objections (%) [N=57] [1]
LEA in which school located	33 (58%)
Another school(s)	19 (33%)
At least 10 parents	13 (23%)
Different LEA from school	6 (11%)

[1] Percentage is more than 100 as in some cases objections came from more than one category (e.g. both an LEA and a group of parents objected).

As noted above, the only categories of school able to object are those that are responsible for their own admissions - namely foundation schools and voluntary-aided schools. The types of admission authorities about which objections were made were predominantly foundation schools (60%), followed by voluntary-aided schools (23%) then LEAs (16%).

The evidence from our analysis indicates that some LEAs are highly proactive in making objections to the schools adjudicator. One shire LEA in the South East of England has a very highly developed quasi-market in secondary education. It has a large number of foundation and voluntary-aided schools and many of these had introduced partially selective admissions criteria. The LEA sought to reduce selection within its schools by objecting to admissions via the Office of the Schools Adjudicator. Another very proactive LEA was an outer London authority in which all the secondary schools, except for one, had become grant-maintained; moreover, all those that were not fully selective had also introduced partial selection by ability. Interestingly, all the non-selective schools have since dropped admissions criteria relating to partial selection and (with the exception of one voluntary-aided school) now admit pupils on the basis of siblings and distance. The LEA, for its part, objected to partial selection in neighbouring LEAs. This may be seen as an attempt to ensure that the schools in the LEA are not unfairly disadvantaged by the removal of partial selection – if schools in neighbouring LEAs retain partial selection it is likely that able students will be selected by these schools, leaving schools in the LEA where partial selection has been removed with a less advantaged pupil intake (and in turn poorer examination results at both school and LEA levels).

In contrast to the above LEAs, which were seeking to limit partial selection, one inner London LEA challenged the decisions made by the schools adjudicator about partial selection. In this case the LEA was a Conservative administration and strong supporter of selection by ability and aptitude.

What types of objections were made?

Objections to the Office of the Schools Adjudicator concerned different aspects of the admissions process. We classified the types of objections made, but it is important to note that in many cases objections related to more than one admission criterion.

We found that of the 57 objections about which decisions were made by the adjudicator, the vast majority made reference to partial selection or interviews (39 out of 57 cases - 68%). The remainder (33%) did not mention partial selection or interviews – they related to issues such as whether employees/children of former pupils should have priority for places, concern about the testing procedures in operation, and feeder schools to named secondary schools.

We found that the majority of the objections about partial selection were concerned with partial selection by ability (67%) whilst a smaller proportion were concerned with partial selection by aptitude (44%). Four (10%) mentioned interviews and one (3%) ‘banding’ (percentages add up to more than 100 as in a number of cases different types of objections were made together). Given the fact that so many objections focused on partial selection, we now examine the outcome of the objections that mentioned partial selection.

Decisions on partial selection

We examined whether objections made to the Office of the Schools Adjudicator were upheld. This analysis focuses only on partial selection by ability and aptitude. We focused on individual *objections* not adjudications as some cases included more than one objection. A total of 43 objections related to partial selection by ability (26) or aptitude (17). The decisions made are presented in Table 3.

Table 3 **Decisions made by schools adjudicator**

Decision on partial selection by aptitude/ability	Number of cases (%) [N=43]
Objection not upheld	25 (58%)
Objection upheld & partial selection reduced	13 (30%)
Objection upheld & partial selection removed	2 (5%)
Other changes [1]	3 (7%)

[1] For example, changing the number of pupils selected by aptitude/ability to a percentage.

The majority of objections were not upheld by the schools adjudicator; in some cases the objection was partially upheld (e.g. by partial selection being reduced) and in only two cases was the objection upheld. In both these cases the partial selection by ability was deemed unlawful as it had been introduced after the 1997/98 school year.

It is important to note that, whilst we have provided information on the decisions made by the schools adjudicator, there were a number of legal challenges made and four of these related to reducing partial selection. In three cases, an LEA challenged a decision to reduce partial selection in two of its foundation schools and one community school; the adjudicator's decision was quashed. In another case, as a result of judicial review, a decision to reduce partial selection was referred back to the Office of the Schools Adjudicator and another determination was made. In effect, this means that four (out of 13) decisions that were upheld by the schools adjudicator and in which partial selection was reduced were subject to legal challenge².

Overall analysis of decisions made by schools adjudicator

In this section we analyse the decisions made by the schools adjudicator. Whilst we focus primarily on the decisions made in relation to partial selection we also examine those that relate to interviews and other potentially selective admissions criteria (such as giving priority to certain categories of pupils). In doing so, we examine specific adjudications. At the outset it is worth noting that the issue of intakes to other schools had been a factor in the decision of schools to introduce partial selection. In one case (00081) the governing body noted in response to the objection that:

The school has been unable to attract a proportionate share of able pupils as a result of competition from local ... voluntary-aided schools [in the LEA] and also from 11 to 18 schools in [neighbouring LEA x] and grammar schools in nearby [LEA y]. There is also a large independent sector which attracts many able pupils from [the school's] natural catchment area.

It is not possible to evaluate the extent to which these concerns were in fact valid, but it is hardly surprising given the quasi-market in operation in England and the incentive structures in place, that schools should be seeking to maximise the number of high attaining students they recruit, given the strong links between prior attainment and later attainment and the high political profile given to school performance in 'league tables'.

Partial selection by ability or aptitude?

It is important to note that the 1998 Act does not define aptitude. 'Ability' is defined in section 99 as 'either general ability or ability in any particular subject of subjects'. In one case (00080JR/00078JR), the school about which an objection had been made selected pupils as follows: 10% of places for pupils with proven musical ability, 5% of places for pupils with ability in dance, as a result of an audition and 30% of places for pupils with technological aptitude. The adjudicator in her conclusions notes:

'Aptitude is not defined in the [School Standards and Framework] Act, but paragraph 5.15 of the Code [of Practice] suggests that a pupil with aptitude is one who 'is identified as being able to benefit from teaching in a specific subject, or who has demonstrated a particular capacity to succeed in that subject'. If the terms of this admission criterion were widened to enable 10% of pupils to be selected with 'aptitude' for music, as this term is understood in the Code, this would respond favourably to objectors who complained about access to the school for local children'.

The adjudicator made a similar point about ability in dance and suggested admitting 5% of the intake on the basis of aptitude. Her final determination (in relation to partial selection) was that the criteria for the following academic year should read: 10% of places for pupils with musical aptitude, 5% for pupils with aptitude for dance and 10% for pupils with technological aptitude. This particular case, then, raises a crucial point, what exactly is the difference between ability and aptitude and how can the two be differentiated?

A rather different approach was adopted in one early adjudication. In this case (00036), the LEA objected, amongst other things, to selection by a foundation school of pupils with 'proven aptitude' in music. After the objection had been made the school proposed a definition of aptitude relating to assessed music grades as awarded by named examination bodies. The adjudicator's decision is given in Figure 2 below.

Figure 2 Decision made in case 00036

Decision

I uphold the objection to the testing of pupils for selection by aptitude on the grounds that the tests and processes to be used are not clearly stated and may prove to be subjective, or tests for ability, or disadvantage children from low income families ... I direct that:

- the wording of criterion 6 should read *"Up to 10% of places will be allocated to pupils who can demonstrate a proven aptitude in music and who can benefit from the school's expertise and facilities in this area. Priority will be given to those with the greatest aptitude"*;
- the school provides additional information in support of its admission criteria wherein a clear statement of the process by which selection by aptitude in music is to be carried out. Such a process must not discriminate on the grounds of gender, ethnic origin, disability or family background, i.e. the process must enable selection of those pupils who would most individually benefit and gain added value from access to the school's facilities and expertise in music;
- the school include, within the selection procedures ... aspects of musical assessment which do not relate purely to the playing of orchestral instruments, and provides an opportunity for pupils with a broad range of musical skills and experience to demonstrate their aptitude. Such assessment might include evidence of involvement in extra-curricula musical activities, such as composition or voice, or demonstrations of a capacity to perform upon a broader range of instruments which are readily available within primary schools such as the recorder or percussion;
- the school should consider making arrangements to correlate attainment data for those students selected by aptitude for music and the general ability grades for all pupils, where possible both pre- and post- selection, in order to be in a position to assess whether their selection process is one by which pupils are being selected by aptitude for music and not by general academic ability;
- the school should consider using a combination of its own internal music expertise, written evidence from Primary Headteachers, music teachers, choirmasters, and other external assessors, to avoid any future criticism on the grounds of subjectivity.

Another case (00094/00097/00101/00082) highlights the problems with the distinction between ability and aptitude. In this case, the foundation school was selecting 30% of its intake on the basis of its general ability test and up to 10 pupils (about 5%) on the basis of 'proven ability or aptitude for music'. In the evidence, the adjudicator notes:

The governors of [the foundation school] are satisfied that its screening procedures for assessing musical aptitude do not assess general ability. The governors were not, however, able to produce an ability profile for those pupils admitted because of their musical aptitude and thus such admissions may be leading to a higher than 30% admission by ability.

In this case, the adjudicator determined that selection by general ability be reduced from 30% to 10%, and that admission by musical aptitude could remain unchanged.

Why were objections not upheld?

Objections to partial selection were only upheld in their entirety when new selection had been introduced. Under section 100 of the School Standards and Framework Act partial selection by ability introduced after the 1997/98 academic year is unlawful.

One of the reasons that objections were not upheld appears to be that in some cases evidence was not provided by the objector. In one case (00015) for example, a school was admitting 15% of pupils by reference to general ability. However, the selection had been in place since September 1997 and although the LEA objected it did not provide enough evidence. The LEA alluded to children being denied places in their local area but provided no concrete examples. In another case, which was similarly not upheld the adjudicator notes that it is 'impossible to evaluate the extent of pupil travel and the adverse effects of pupils having to sit a number of tests' (00016).

In another case (00089), the adjudicator did not uphold an objection to 15% partial selection because the objecting LEA did not provide evidence supporting any of the relevant pointers from the Code of Practice (see Figure 1).

By way of contrast, in case 00033/00069, the adjudicator deemed that although partial selection by ability in a foundation school was lawful there was a problem in the LEA as a whole with students being unequally distributed between schools. The adjudicator noted that if 50% partial selection were to remain this would result in a worsening of the ability profile in other non-selective schools in the LEA; he thus reduced partial selection by ability from 50% to 35%. In the case of a voluntary-aided school (00035/00071) selecting on the same basis, evidence of the adverse effects of partial selection by ability was provided by the LEA, and the adjudicator decided that 'the basis of selection [had] changed significantly' since 1997. Yet, again, partial selection by general ability was reduced from 50% to 35%.

In a further case (00057/00063/00064) which resulted in partial selection being reduced from 15% to 10%, specific evidence was provided that partial selection by ability had changed admissions patterns and generated adverse effects. One of the objectors, another foundation school, produced a report showing a detrimental effect on its admissions. The adjudicator reasoned that completely removing partial selection could have adverse effects on the school's balanced intake of pupils and concluded that partial selection should be reduced because of adverse effects on the objecting

school, the disproportionate distribution of pupils with learning difficulties and local children sometimes not being offered a place because of partial selection.

The role of parental objections appears to be significant in some cases. In the case of 00081, the school was selecting 15% of pupils on ability. However, the adjudicator noted:

The absence of specific and recorded evidence from the LEA ... makes it impossible to assess the significance of the school's arrangements ... The absence of any parental objections to partial selection may indicate that this particular issue is not as significant as it might be.

Thus, the adjudicator did not uphold the objection.

Inconsistencies in determinations relating to partial selection

The percentages to which partial selection were reduced appear to be inconsistent – sometimes they were reduced to 10%, sometimes to 15%, sometimes to 25% and sometimes to 35%. However, in the absence of clear guidance as to what is an 'acceptable' level of partial selection, there is perhaps an inevitability about this as each case is looked at on its merits.

In some cases, the adjudicator focused very much on the importance of an academically-balanced intake. In case 00094, the foundation school was selecting 30% of pupils on the basis of general ability and 5% on the basis of aptitude/ability in music. Selection by ability/aptitude in music was retained, but selection by ability was reduced to 10%. The adjudicator noted:

I accept that a comprehensive school may well be more successful if it has a balanced intake but I consider that the measures taken by [the school] have skewed its intake towards the higher end of the ability range... My judgement therefore, is that taken as a whole, the admissions procedures ... are having an adverse effect upon other comprehensive schools in the area and that they are not, therefore, in the best interests of local children and parents.

In another case (00095) the same adjudicator allowed 15% selection by general ability to remain as in this case the school's ability profile was considered to be in line with other secondary schools in the area. The adjudicator also made a point of mentioning that although the school was a technology college, it did not admit boys on the basis of aptitude for technology³. The adjudicator

concluded: ‘to abandon or reduce partial selection could have a detrimental effect on the achievement of a balanced intake and reduce the high standards it achieves’.

Apparent inconsistency is also demonstrated if one examines cases where there has been a legal challenge to a decision. Although in all cases the objections were partially upheld, the adjudicator determined that less of a reduction in partial selection should be made than had been proposed in the initial adjudication. Thus, as a result of a second adjudication following a judicial review one school was required to make less of a reduction than in the first adjudication. In this case, the first adjudication reduced partial selection from 45% (30% technology aptitude, 10% music talent and 5% dance talent) to a total of 10%; the second adjudication on the other hand resulted in selection being set at 10% for music aptitude, 5% for dance aptitude and 10% technological aptitude (25% in total)⁴.

Other issues

So far, we have focused on partial selection by ability and aptitude. In this section, we highlight some of the other issues raised in the adjudications, in particular interviews and the priority given to children of employees.

Objections to the practice of interviewing pupils prior to admission were made in relation to one voluntary-aided school (00120). The school claimed that they were not breaking the law as the Code of Practice does not explicitly state that interviews with pupils are not allowed. However, the adjudicator upheld the objection. Other objections to interview-like processes (e.g., sports trial, musical audition) were similarly upheld by their respective adjudicators (00118/00125, 00043/00070).

Interestingly, across all the examined adjudications, none of the objections to priority being given to children of former pupils of the school provided evidence showing specific examples of adverse effects, but each time the adjudicator decided that such admissions criteria were unfair (e.g., 00022/00040) and objections were thus upheld. In several additional cases (e.g., 00032, 00033/00069) an admissions criterion referred to priority being given to children with a parent employed at the school; this, each adjudicator similarly reasoned could discriminate against traveller and refugee children who had moved to the area and was thus contrary to the Race Relations Act 1976.

In these cases, the Code of Practice clearly enabled particular admissions policies and practices to be disallowed.

Legal challenges to decisions

An LEA challenged the decision made by the schools adjudicator about partial selection in two foundation and one community school in the LEA. As a result of the judicial review the decision made by the adjudicator was quashed (largely on a technical issue related to the timing of the decision and the regulations in force at that time). In a further case, a foundation school challenged a decision by the schools adjudicator and the court in the judicial review case ordered that a different adjudicator consider the case. A final case involved a judicial review of admission arrangements in an LEA.

4 Discussion

Our analysis of the ‘quasi-regulation’ of school admissions has revealed that the new legislation and accompanying Code of Practice has had some impact on the process of admissions to secondary schools. In one LEA, admission authorities came to an agreement without seeking adjudication and removed partial selection. It is not known to what extent this has happened elsewhere in the country. However, in many authorities in the South East of England with its highly developed secondary school quasi-market, the policy changes have resulted in some inequitable admissions criteria being removed. This is more apparent with some criteria than others (e.g. children of employees having priority) as the school as admission authority could be contravening the Race Relations Act 1976. In other cases, and particularly in relation to partial selection by ability or aptitude, adjudicators seem to be adopting a cautious approach and reducing partial selection in some, but by no means all cases. The apparently inconsistent nature of these reductions does not make for a coherent approach to admissions.

It appears that this approach, of every case being considered on its merits, has arisen because policy makers have been unable to decide on whether they wish to see partial selection continue or not. There are conflicting messages. For example, partial selection by aptitude is condoned for schools with a ‘specialism’ (which include specialist schools – although very few specialist schools are in fact selecting on this basis - see West et al., 2000) yet partial selection by ability is not condoned. In practice it appears unlikely that ability and aptitude can be clearly differentiated, so there is a problem that needs to be addressed by policy makers.

In a recent discussion in the House of Commons, the Secretary of State for Education and Employment (Hansard, 2001) was asked:

Instead of promoting the idea of 10 per cent selectivity in specialist schools, will he reduce selectivity so that we end up with the universal comprehensive system that would be the best possible support for inner city schools?

The Secretary of State replied that the recent Green Paper (DfEE, 2001) calls for 'embracing without reservation the principles of inclusion and equality of opportunity on which comprehensives were founded' and went on to say: 'We have every intention of ensuring that where parents want change, they can use the adjudicator system to trigger it'. It is thus possible that a new Labour Government may make changes to the system by which partial selection can be challenged by parents.

More generally, some of the problems associated with school admissions are flagged up in the Green Paper (DfEE, 2001) which states:

In some areas there is still scope for better management and co-ordination of admissions operations, and better ways of avoiding the concentration of the most disadvantaged pupils in the least popular schools. We would like to be able to address the dissatisfaction that still exists in some parts of the country.

There are clearly still problems with the regulation of school admissions. We now move on to some policy recommendations. To improve the process a number of steps should be taken:

- The remit of adjudicators should be widened. At present the system is reactive not proactive. The Office of the Schools Adjudicator cannot carry out its own investigations of admissions policies and practices. It is reliant on complaints made to it and on information provided by objectors and defendants. If it discovers unlawful practices it is unable to intervene. Nor can it commission research to evaluate the impact of partial selection. Decisions may seem to be arbitrary and they are rarely (with the exception of one shire authority in the South East of England) based on a wider evaluation of the impact of selective admissions within an area.
- Different types of objectors should be allowed. One key group of stakeholders that is completely ignored in the process are the governing bodies of community and voluntary-

controlled schools. The assumption appears to be that the LEA will act on their behalf. This is clearly demonstrated not to be the case in the analysis reported above. As community and voluntary-controlled schools are likely to bear the brunt of selective admissions policies by other local schools, it would seem appropriate for them to be able to make complaints about admissions arrangements at schools responsible for their own admissions. Governors have responsibilities to their schools and pupils within them and are more likely to be able to convince adjudicators of the impact of partial selection and subjective admissions practices.

- It is important to note that LEAs may have a vested interest in maintaining selective admissions policies. This is because schools with such policies are likely to get higher results in the DfES's school performance tables and boost the LEA's performance and league table position. Thus there is an incentive for them not to object. Conversely, there is an incentive for LEAs whose positions are worsened by neighbouring LEAs partially/covertly selective admissions policies to object to the Office of the Schools Adjudicator.
- Better monitoring of the admissions process is needed. This needs to be carried out at an LEA level. The fact that the DfES will have available Key Stage 2 test results means that LEAs should be in a position to monitor who applies and who is admitted to schools (although the former would require the co-operation of schools that are their own admission authorities).
- More information about parents' right to object to the Office of the Schools Adjudicator is needed. This could be provided using a range of mechanisms: through the LEA secondary school prospectuses and by directing parents to the web-site of the Office of the Schools Adjudicator; via parent representatives on LEAs; via the Office of the Schools Adjudicator through articles published in the media; and via leaflets to parents – the Office of the Schools Adjudicator already produces such leaflets but they need to be made more widely available.
- Objectors need to know how important it is to have evidence to support their case particularly with respect to partial selection. Without such evidence an objection to the schools adjudicator appears less likely to succeed.
- It is clearly an anomaly for the legislation not to allow parents to object to new selection by ability (which is unlawful) or new selection by aptitude (which may be lawful or unlawful). Parents should be able to object to all forms of partial selection, whether existing or new. It is

unreasonable for parents not to be able to object when it is their children who are likely to be those who suffer directly from creaming by schools that are partially selective.

- Amendments to the Code of Practice are needed given the adjudications that have already been made. For example, one important adjudication has not accepted the view that *pupils* can be interviewed on their own.

An alternative way forward would be for politicians to make a clear policy decision and make partial selection unlawful, in all its guises. One of the reasons that admission authorities give for introducing partial selection is to maintain a balanced intake because of creaming by other schools. If all partial selection – and indeed all selection – were to be made unlawful, it is likely that the pressure to select overtly or covertly would be reduced markedly. Whether a new Labour Government will move in this direction remains to be seen. However, with the ‘standards’ agenda having such a high political profile, it seems unlikely that any government would feel able to accept the likely lowering of ‘standards’ as measured by examination results that may result from the removal of all selection – even though there may be commensurate increases in other schools.

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Acknowledgements

The research reported here is part of a larger project being undertaken for the Research and Information on State Education (RISE) Trust. We would like to thank RISE for the information, advice and support provided. We would also like to thank the Office of the Schools Adjudicator for their assistance and those LEAs that provided us with additional information. Helpful comments

were also received from Margaret Tulloch, Philip Noden, Hazel Pennell, John Wilkes and from participants at the Parental Choice and Market Forces Seminar held in March 2001 at which an earlier version of this paper was presented. The views expressed are the authors' own. The full report for RISE examining changes to admissions policies and practices since 1997 is due to be completed in 2002.

¹ The concept of quasi-regulation is being used to refer to the range of rules whereby the government influences relevant bodies to comply with legislation; however, these do not form part of explicit government regulation. Codes of practice can be considered to be a form of quasi-regulation.

² Another judicial review related to a decision as to how parental preferences should be handled when parents apply for a secondary school place and was challenged by the LEA; the decision of the adjudicator was upheld in this case (see West & Ingram, 2002).

³ This is an interesting point as the implication of this statement is that the school is unusual in not selecting by aptitude; the research evidence on the other hand suggests that the majority of specialist schools do not select pupils by aptitude in the specialist subject(s) (West et al., 2000).

⁴ In another case, about which a decision was made subsequent to the period included in our study, a second adjudication following a judicial review resulted in partial selection being reduced less than it would have been, had the first adjudication not been quashed.