



**Department for Education consultation on Changes to the
Admissions Framework**

Submission from the Association of Teachers and Lecturers

July 2011

ATL, the education union, is an independent, registered trade union and professional association, representing approximately 160,000 teachers, head teachers, lecturers and support staff in maintained and independent nurseries, schools, sixth forms, tertiary and further education colleges in the United Kingdom. AMiE is the trade union and professional association for leaders and managers in colleges and schools, and is a distinct section of ATL. We recognise the link between education policy and members' conditions of service.

ATL exists to help members, as their careers develop, through first rate research, advice, information and legal advice. Our evidence-based policy making enables us to campaign and negotiate locally and nationally.

ATL is affiliated to the Trades Union Congress (TUC), Irish Congress of Trade Unions (ICTU), European Trade Union Committee for Education (ETUCE) and Education International (EI). ATL is not affiliated to any political party and seeks to work constructively with all the main political parties.

Introduction

One of the key objectives of the Government's review of the School Admissions Code and the School Admission Appeals Code (the Admissions Framework) is to reduce the costs and bureaucratic burden for schools, whilst ensuring that the admissions and appeals system remains fair and objective.

ATL has long campaigned for greater professional autonomy for the education workforce to ensure a broad and balanced education that meets the needs of all children and young people. We do not agree, however, that professional autonomy is synonymous with greater institutional autonomy for a diversity of schools which are their own admission authorities. We believe that autonomy within school admission arrangements will serve to reinforce and exacerbate inequality of access, particularly for the most disadvantaged pupil groups. At the same time, the much promulgated 'localism' or 'autonomy' agenda will enable the coalition government to step away from addressing the fundamental social divisions and inequalities within our society by making this effectively a 'local' or individual responsibility.¹

Research has shown that schools with their own admission arrangements tend to have far less socially balanced intakes, with poorer families having unequal access to high performing schools. Successive School Admission Codes between 1999 and 2010 have increasingly sought to regulate school admissions with a

¹ Cf. S. Khan and C. Stockstill, 'Dangers of Localism' in *Runnymede Bulletin*, no. 363, autumn 2010, p.13.

view to ensuring greater equality of access and reducing school segregation. Evidence indicates that the 2003 and 2007 Codes have at least in part contributed to a change in the social composition of pupils at schools with formerly inadmissible selection criteria and admission arrangements.²

ATL supports the strong and progressive regulation of school admission arrangements and believes that centrally co-ordinated school admissions across an area by the local authority ensures equality of access and socially balanced intakes with important benefits for school performance. Local democratic planning, in our view, is key to ensuring a good local school for every child.

ATL believes that the draft proposals within the revised admissions framework, alongside the abolition of local school admission forums, substantially weaken the role of local authorities (LAs) and the Office of the Schools Adjudicator in regulating school admissions, and will reverse many of the more progressive measures introduced by the previous Codes. Attempts to reduce bureaucracy will instead place the bureaucratic and financial burden onto LAs, for example with the proposed removal of in-year co-ordinations and the application of Fair Access Protocols (FAPs), and onto parents, for example, in making in-year applications and challenging a school's admission arrangements and decisions.

ATL disagrees that the revised Code simplifies and makes admission arrangements more transparent. An increasing number of different types of schools becoming their own admission authorities and being able to exercise a degree of discretion over a range of admission criteria, will not reduce the complexity of the admissions process nor will the changes ensure procedural fairness or a balanced social composition of school intakes.

ATL Response

The Application of the School Admissions Code

The revised Code applies to admissions to all *maintained* schools in England. Academies are required through their funding agreements to comply with the Code and the law relating to admissions. However, ATL is very concerned that the Secretary of State reserves the power to vary this requirement for academies "where there is demonstrable need".³ The draft Code does not set out why there should be particular 'demonstrable need' in academies, but not in community or voluntary-controlled schools, nor does it define 'demonstrable need'.

ATL is extremely concerned that the ambiguities and flexibility for some schools in their admission arrangements based on a 'demonstrable need' provision backed by the Secretary of State will undermine procedural fairness and risk reinforcing school segregation.

Fair Access Protocols (FAPs)

While the recognition of 'demonstrable need' within the draft Code might lead to inconsistent normal admission arrangements of schools within an area, ATL believes that the procedural fairness of the Code is further weakened in

² R. Allen, J. Coldron and A. West, *The Effect of Changes in Published Secondary Admissions on Pupil Composition*, Department for Education, Research Report DFE-RR038, 2010.

³ DfE, *Draft School Admissions Code*, consultation document, (2011), section 4, p.3.

requirements around local authorities' Fair Access Protocols (FAPs) and through the abolition of mandatory School Admission Forums.

FAPs regulate in-year school admissions, particularly for children who may have difficulty securing a school place, with the purpose of ensuring fairness and equality of access. For FAPs to be fully effective, ATL believes that local authorities should continue to co-ordinate all in-year applications. We also consider such a requirement on local authorities to be an effective means of reducing any additional bureaucracy for schools which may arise from parents applying directly to a number of schools simultaneously outside normal admission rounds in order to secure a place for their child.

According to the new draft Code, local authority FAPs must only be agreed with the *majority* rather than all schools in their areas. The Code does not offer any guidance as to what constitutes a majority and how to promote local consensus on admission arrangements in the absence of Admission Forums, nor does it require mandatory participation of all schools within the area in the agreement of an FAP.

Although, according to the Code, all admission authorities must participate in locally agreed FAPs, it appears from the Code that local authorities can only "direct other admission authorities for any maintained school to admit a child".⁴ This suggests that Academies can be asked but cannot be directed by the local authority to admit a child under the FAP. If an Academy refuses to admit the child, the case can be referred for a decision to the Secretary of State who has the power to direct an Academy to admit a looked after child or will otherwise reach a decision in consultation with the Schools Adjudicator.⁵

On the issue of FAPs, we would further like to stress our serious concerns about omissions and ambiguities within the draft Code in regards to excluded children and children with challenging behaviour. Previously, School Admission Forums have facilitated school partnerships, including with their LAs, to manage excluded pupils and those at risk of exclusion, guaranteeing each child their right to an education that is accessible to all.⁶

Under the new provisions within the Code, excluded children and children with challenging behaviour are no longer identified as having to be included as a minimum into the list of children covered by the FAP. ATL understands that the Education Bill requires schools to take responsibility for the education of excluded children, but we do not see how this responsibility can be reconciled with the proposed School Admissions Code.

As far as children with 'challenging behaviour' are concerned, the Code specifies that "admission authorities must not refuse to admit children in the normal admissions round on the basis of their poor behaviour elsewhere".⁷ However, *outside* the normal admissions round, schools where the governing body is the admission authority can refuse to admit a child with challenging behaviour.⁸ In our view, these provisions effectively create different requirements for different types of schools. It is also difficult to see how contradictory requirements around taking account of reports from previous schools about children's past behaviour for normal and for in-year admissions can be considered procedurally fair or indeed guarantee consistency in schools' admission arrangements.

⁴ *Draft School Admissions Code*, 3.15, p.25.

⁵ *Draft School Admissions Code*, 3.19, p.26.

⁶ United Nations Convention on the Rights of the Child, Article 28, (1990).

⁷ *Draft School Admissions Code* 3.7, p.23.

⁸ *Draft School Admissions Code*, 3.11, p.24.

The Code further states that FAPs must ensure that “no school takes more than its share of children with challenging behaviour”.⁹ There is no definition within the Code of what constitutes a school’s ‘fair share’ of excluded children or children with challenging behaviour, nor does the Code provide examples of what types of behaviour are considered to be ‘challenging’. ATL believes that the Code’s provisions around behaviour and exclusions are not only bound to lead to a steep rise in Fair Access Protocol cases for local authorities, thus adding to the bureaucratic burden of LAs and parents wishing to challenge the decision of a school, but they will also reinforce substantial inequalities in terms of access to education and school segregation.

ATL also notes with concern that there is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the FAP, which suggests that any rhetoric of greater parental ‘choice’, which is better described as parental preference, is only applicable during the normal admissions round and effectively only for those parents who are more adept at navigating the admissions system for their own benefit.

ATL is extremely concerned that the draft Code will produce a set of ‘wanted’ and ‘unwanted’ children through varying degrees of autonomy for different types of schools in their admission arrangements. We believe that a child’s entitlement to an education that is accessible to all is best met through a school admissions process in which admission powers are held by the local authority. As part of these powers, the local authority would set consistent admission criteria across all schools and administer all school admissions, both in-year and during normal admission rounds.¹⁰

Admission Forums have previously ensured that the admissions system serves the interests of all children and families within an area and promotes social equity. Forums have scrutinised all local admission arrangements and referred objections to the Office of the Schools Adjudicator where an admission authority has disregarded the advice of the Forum, or school policies or admission arrangements appeared unfair, unlawful or in contravention of the mandatory provisions of the School Admissions Code.

ATL objects very strongly to the abolition of Admission Forums which have not only provided the local authority, other admission authorities and key stakeholders with the opportunity to consider, agree and improve local admission arrangements, but also determined, promoted and monitored the effectiveness of in-year FAPs.

School Admission Arrangements

Consultation on Changes to the Admission Arrangements

The Code stipulates that admission authorities, including local authorities, academies, trusts or governing bodies, must determine their admission arrangements annually. If the admission authority proposes any changes to the admission arrangements of the school, it must first publicly consult on the arrangements. If no changes are proposed, a school’s admission arrangements must be consulted on at least every 7 years.¹¹ The Code identifies parents, other schools, religious authorities and the local community as stakeholders for any

⁹ *Draft School Admissions Code*, 3.10, p.24.

¹⁰ See also, R. Allen, J. Coldron and A. West, *The Effect of Changes in Published Secondary Admissions on Pupil Composition*, Department for Education, Research Report DFE-RR038, 2010. p.23.

¹¹ *Draft School Admissions Code*, p.6.

consultation but does not make any reference to school staff and their recognised trade unions.

ATL believes very strongly that the Code should provide a clearly defined set of 'minimum requirements' for any consultation on school admission arrangements to ensure consistency across different admission authorities. These minimum requirements should include guidance on the format and publication of the consultation as well as on the range of key stakeholders to be consulted, including school staff and trade unions.

Furthermore, we disagree with the lengthening of the consultation period on school admission arrangements from three to seven years if there are no changes. Depending on their child's educational journey and the school's consultation cycle, this may mean that some parents may never be consulted on the admission arrangements of their child's school. With governing bodies usually elected for a period of four years, ATL believes that a seven-year consultation framework for admission arrangements is not appropriate. We strongly recommend retaining the existing timeframe.

Changes to the Published Admission Number (PAN)

The draft Code proposes that successful schools will no longer need the approval of their local authority if they want to admit pupils in-year above PAN. However, schools must notify their LA of a change to PAN and publish this information on the school website. Anyone who feels that proposals by a maintained school or academy to increase PAN are unreasonable can refer an objection to the Schools Adjudicator, but there will be a strong presumption in favour of increase unless such an increase would lead to a clear threat to pupil safety.

ATL wants the best education system for all our children, but we think that any proposal which allows some schools to get bigger at the risk of closing down others due to insufficient pupil numbers, rather than supporting and investing in all our schools, is extremely divisive and undermines attempts to enable every child to attend a good local school. The PAN proposals weaken local authorities' ability to plan school places strategically in their area.

We believe that the possibility for successful schools to admit in-year above PAN further undermines the effectiveness of the local FAP as these schools would effectively be 'more than full' when it comes to any referrals under the FAP which could then be deemed to pose a risk to pupil safety under the proposed regulations.

However, ATL also objects to the presumption in favour of increase within the draft Code without a definition of pupil safety. There is often a tendency within education policy to adopt an unduly narrow understanding of safety as the prevention from physical harm. ATL continues to maintain that any definition of 'pupil safety' must include an emphasis on well-being as a result of enabling children and young people to develop and reach their full potential.¹² This would include proven measures to minimise and eliminate stress, bullying and any verbal and physical abuse amongst pupils.

ATL notes that a non-defined concept of 'pupil safety' acts as the only limiting factor to any changes to PAN. There is no reference, for example, to a mandatory assessment of any implications for staff in terms of their workload and well-being, nor of existing school buildings and premises which may not

¹² ATL, *Response to a DCSF consultation on staying safe*, October, (2007).

necessarily be suited to the accommodation of an increased number of pupils. We are very concerned that the growth of a successful school may, for example, result in the loss important outdoor learning opportunities or school playing fields with important consequences for the provision of a broad and balanced education.

Infant class size exceptions

The Code proposes to add twins and other multiple birth children as well as children of service personnel to the list of excepted pupils with regard to the statutory limit for infant school class sizes. While we agree that everything should be done to ensure that no children are disadvantaged by schools' admission arrangements, our members' experience, including through local school admission forums, is that twins and multiple birth children generally tend to be considered for admission at the same school within the existing infant class size limit of 30 pupils per class.

The admission of service children above school class sizes of 30 children can put considerable pressure on schools in particular areas. ATL would therefore welcome more detailed guidance of how the exception of service children will be accommodated by different admission authorities in a local area. Any exceptions should be accompanied by additional school funding and adequate staffing arrangements.

Oversubscription criteria

ATL principally welcomes the Code's requirement that school's oversubscription criteria "must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation".¹³ From a strong concern for procedural fairness, however, we disagree with admission authorities' use of tie-breakers "to decide between two applications that cannot otherwise be separated". The Code does not offer any guidance on 'clear and fair' tie-breakers, leaving it to individual admission authorities to decide their own. We strongly prefer the use of locally agreed 'second choice criteria' rather than tie-breakers within the context of local authority co-ordinated admission arrangements.

The Code rightly makes provision for a religious authority to determine the nature of any religious activities which designated faith schools may take into account for their admission arrangements. The School Adjudicator's Annual Report 2010 has shown, however, that some diocesan authorities had used a points system to determine involvement in religious practices which could not reasonably be met by particular groups within the faith community. An example would be the requirement to have children baptised within the first six months of their lives when this is not the cultural norm amongst immigrants of the given denomination.¹⁴

Although the Code is clear that admission authorities must not "give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority"¹⁵, ATL is concerned that the new Code no longer makes any reference to school policies which may undermine fair admission arrangements, such as the requirement to

¹³ *Draft School Admissions Code*, 1.6, p.8.

¹⁴ BBC, *School places watchdog warns over simplifying code*, 1 November 2010.

¹⁵ *Draft School Admissions Code*, 1.7 (e), p.9.

purchase an expensive school uniform.¹⁶ Admission authorities are also no longer required to state clearly whether school transport will be available and, if so, at what cost.¹⁷ ATL is very concerned that the removal of these requirements within the Code will lead to the covert selection of pupils by some admission authorities.

Admission authorities are also encouraged to set oversubscription criteria most suitable to their own school and according to local circumstances. This includes a new provision for academies and free schools to give admission priority to children attracting the Pupil Premium. ATL does not see any reason why only academies and free schools should be allowed to use the pupil premium as an oversubscription criterion. We recommend that it should be mandatory for all schools within a local area to admit a demographically appropriate proportion of pupil premium children. ATL is in favour of local area banding for all schools for this purpose.

Another new oversubscription criterion within the Code are children of school staff. The Code stipulates that if admission authorities wish to use this permissive criterion, it would be for the admission authorities themselves to define what they mean by 'staff' and whether teaching and non-teaching staff, including those undertaking tasks such as catering, caretaking and cleaning, would be included in any admission arrangements.

Although we welcome the recognition for the need to address the work-life balance of members of staff as parents, we believe this proposal is aimed predominantly at parents who set up free schools. Within the context of a diversity of admission authorities, we believe this will impact negatively on equality of access, particularly to popular schools, of a range of children within the local area.

ATL is strongly opposed to admission authorities determining their own definitions of 'staff' which can be divisive, segregate staff by job responsibilities, and lead to contractual inequalities and low morale. There is also a strong likelihood that schools which are their own admission authorities may increasingly select their pupils by selecting new members of staff. We would like to see a detailed equality analysis of this and other proposals to ensure that the draft Code itself is fully compliant with equality legislation.

Finally, we are concerned about any inconsistency within the Code around random allocation of school places as an oversubscription criterion for individual schools. The Code expressly prohibits local authorities from using random allocation, yet admits this as a legitimate method for individual admission authorities, such as academy trusts or governing bodies, to determine the allocation of places at their schools. According to the Code, these school admission authorities must set out clearly how they will operate a process of random allocation, ensure the transparency of their admission arrangements together with the prioritisation of looked-after children, and the independent supervision of the process.

While a process of random allocation by local authorities would be more likely to produce socially balanced intakes at all schools within an area, ATL believes that the random allocation of school places by individual admission authorities has a greater tendency towards unfairness and skewed intakes. This is largely due to the fact that the allocation of places would follow from the expression of parental preference.

¹⁶ School Admissions Code, (2010), section 1.73, p.32.

¹⁷ School Admissions Code, (2010), section 1.98, p.39.

School 'choice advisers' were previously appointed by local authorities as a result of the statutory recognition that parents from disadvantaged social backgrounds are less likely to engage with the process of 'choice' and tend to select a school on the basis of different criteria than those used by more socially advantaged parents.¹⁸ Although we expressed our reservations about LA 'choice adviser' at the time, primarily from a concern over the implications of market-style 'reforms' of our education system, ATL believes that with the proliferation of a diversity of educational providers, independent advice for parents is now vital to ensure procedural fairness and to promote social equity. The revised Code makes reference to local authorities being required to provide advice and assistance to parents when they are deciding upon their school preferences, but there is no requirement for the format and independence of this advice.¹⁹

We are strongly opposed to individual admission authorities being able to devise their own processes of random allocation and to appoint their own 'independent' scrutineers of such processes. As the Code does not set any minimum requirements for schools allocating places on a random basis, any objections to the outcome of such processes would be virtually impossible.

Changes to the role of the Schools Adjudicator

ATL principally welcomes the new provision within the Code that anyone should be able to raise an objection with the Schools Adjudicator about the admission arrangements they consider unlawful or unfair of any state-funded school, including academies. We would welcome an additional mandatory requirement within the Code which stipulates that parents should be informed, as part of the advice they receive from their local authority, about their right and the process of raising an objection with the Schools Adjudicator about schools' admission arrangements.

Rather than making objections to schools' admission arrangements an individual responsibility, however, ATL strongly recommends the statutory re-establishment and retention of the School Admission Forums, which included parent, faith and community representatives and school governors amongst others and facilitated an agreed position on the fairness of admission arrangements in their local context.²⁰ We continue to believe that the Forums are better placed and equipped than individual parents to refer any objections on behalf of a wider range of children and their parents to the Schools Adjudicator.

While the decisions of the Schools Adjudicator remain binding and enforceable, and must be implemented by the admission authority without delay, ATL strongly objects to proposals within the Education Bill to remove the power of the Adjudicator to modify admission arrangements of a school.²¹ If the decisions by the Schools Adjudicator are binding and enforceable, there is no reason to remove the power to modify directly any unfair or unlawful admission arrangements of a school. We also believe that this important power of the Schools Adjudicator is crucial to keep any bureaucratic burden for this Office to a minimum.

¹⁸ R. Allen, J. Coldron and A. West, *The Effect of Changes in Published Secondary Admissions on Pupil Composition*, Department for Education, Research Report DFE-RR038, 2010, p.2.

¹⁹ *Draft School Admissions Code*, 2.2, p.17.

²⁰ See DfE, A guide to the law for school governors: Admission forums, updated 20 July 2011, available at <http://www.education.gov.uk/b0065507/gttl/12-admissions/admission-forums> .

²¹ *Draft School Admissions Code*, section 10 and footnote 8, p.4.

With more and more schools becoming their own admission authorities, ATL believes that the existing power of the Schools Adjudicator to modify a school's admission arrangements is a vital safeguard of equality and fairness and should be retained without reservation or modification.²²

The School Admissions Appeals Code

Similar to the School Admissions Code, the Appeals Code has been revised to 'simplify and improve' the appeals system. Reducing costs and bureaucracy for schools, together with giving schools more autonomy, remain key objectives.

The revised Appeals Code builds on the Government's expectation that with the expansion of popular schools there would be a reduced need for parental appeals. Furthermore, a revised simpler and shorter Code reflects the Government's belief that "admission authorities are best placed to decide how to meet the requirements" of the School Admissions Code in their local context.²³

As part of the changes proposed by the Appeals Code, in particular with regard to giving schools greater autonomy, appeal panels are no longer required to refer unlawful admission arrangements to the Schools Adjudicator. Instead, these are to be referred to the admission authority, such as the local authority, the Academy Trust or governing body as appropriate, to prompt a reconsideration of existing arrangements for the next admissions round.²⁴ ATL believes that this provision is far too weak to ensure compliance with the Code and relevant legislation as well as fairness and consistency within the admissions process. We believe that any unlawful arrangement should be referred to the Schools Adjudicator, including by appeal panels, and strongly recommend the retention of the existing provision.

The draft Appeals Code further proposes to remove the requirement for admission authorities to advertise for lay members every three years. Instead, admission authorities must ensure "that panel members retain their independence for the duration of their service".²⁵ The Code does not specify any minimum requirements in order to guarantee panel members' independence. ATL objects very strongly to any proposal that would allow admission authorities to determine their own measures of 'independence' and to be able to retain appeal panel members for any unspecified lengths of time.

Although we accept that schools should not incur any undue costs by having to hold appeal panels at expensive external venues, ATL disagrees with the provision within the Code to hear appeals on the school premises. We believe it is important that the appeals process is, and is also seen to be, procedurally fair. It is not clear how this could be ensured when admission authorities already appoint their own appeals panels and subsequently allow them to convene on school premises. ATL instead recommends a strong statutory role for local authorities in co-ordinating school admission arrangements as well as appeal hearings.

In conclusion, ATL believes that there is an important difference between professional autonomy and institutional autonomy and that the latter, which is essentially structural and procedural, does not necessarily go hand in hand with

²² See also, CASE memorandum to the Public Bill Committee on the Education Bill, session 2010-11, available at <http://www.publications.parliament.uk/pa/cm201011/cmpublic/education/memo/e121.htm>.

²³ DfE, *School Admission Appeals Code*, consultation document, (2011), p.5.

²⁴ DfE, *Consultation on the Changes to the Admissions Framework*, response form, (2011).

²⁵ DfE, *Draft School Admission Appeals Code*, consultation document, 1.3, p.6.

the former. We have long campaigned for greater professional autonomy to ensure a broad and balanced education that is accessible to all our children. The proposals within the revised School Admissions Framework, in our view, increase institutional autonomy at the expense of fair and equal access for all children and young people regardless of their background.

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