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**Quasi-regulation and principal-agent relationships:
Secondary school admissions in London, England**

Anne West, Hazel Pennell and Audrey Hind

Abstract

Market-oriented reforms and school choice policies have had a high political profile in a number of developed countries. This paper examines the issue of school choice through the lens of the English market-oriented reforms; it focuses on the quasi-regulation and regulation of admissions to publicly-funded secondary schools. It examines admissions to state-maintained secondary schools in London in terms of the criteria and practices used in the event of there being more applicants than places available. It also explores changes in admissions criteria and practices between 2001 and 2005 given the legislative and policy changes introduced in the intervening period. Principal-agent theory is used heuristically to explain the differing responses of schools with responsibility for admissions and local authorities to the legislative and policy framework. It is argued that while local authorities act broadly in line with government guidance and regulations as the agent of the government, schools acting as agents do not necessarily do so and more appear to select particular groups of children as opposed to others. This, it is argued, is because the regulatory mechanisms have been insufficient to motivate them to act as intended in relation to their admissions policies and practices in the light of the other policy goals and incentives accompanying the market-oriented reforms.

Introduction

Market-oriented reforms and school choice policies have had a high political profile in a number of developed countries. Writing in relation to the United States, Chubb and Moe (1990) have argued that each pupil should be 'free to attend any public school in the state...' (p. 222), but that schools should be able to make their own decisions about who should be admitted and that they should be 'free to admit as many or as few students as they want, based on whatever criteria they think relevant – intelligence, interest, motivation, behaviour, special needs – and they must be free to exercise their own, informal judgments about individual applicants' (p. 222). In short, pupils' parents can apply to any public schools, but the school is the ultimate decision maker. This model, however, poses problems if parental choice is an intended objective of the market-oriented reforms as individual schools are likely to want to ensure that pupils attending the school are those the school wishes to teach (see Ladd and Fiske, 2001).

This paper examines the issue of school choice through the lens of the English market-oriented reforms, by focusing on the quasi-regulation and regulation of admissions to publicly-funded, state-maintained secondary schools. Both these issues have a key role to play as a result of the reforms that were introduced by Conservative governments between 1979 and 1997 and have been continued by Labour governments since. The reforms implemented in the 1980s by Conservative administrations resulted in the introduction of market principles into the state-maintained school system. A combination of increased parental 'choice', a greater diversity of schools (with schools being able to become 'grant maintained' and funded by central government), per capita (formula) funding and national examination and test 'league tables' led to the development of a 'quasi-market' in school-based education (Le Grand and Bartlett, 1993). The structures set in place provide strong incentives for schools to maximise their levels of funding and maximise their outputs as measured by test and examination results.

A key focus of the reforms was on school autonomy, including control over which pupils are admitted to schools. However, it is important to bear in mind that school autonomy in relation to admissions was not new. Indeed, certain schools have long had responsibility for admissions; these are 'voluntary-aided' schools, in the main Church of England and Roman Catholic. Only a small percentage of secondary schools were (and are) 'voluntary aided' (around 15 per cent). However, following the Education Reform Act 1988, autonomy over admissions was extended to schools that opted out of local authority control to become grant-maintained: currently, around a third of secondary schools in England have responsibility for admissions.

In England, parents make 'preferences' for the schools they wish their child to attend. If there are more applicants than places, the decision as to whether or not a pupil is offered a place is taken by the 'admission authority' – either the local authority (in the case of community and voluntary-controlled schools), or the school in the case of schools that control their own admissions (voluntary-aided and foundation schools). In the former case, the local authority makes an 'administrative' decision allocating (or assigning) pupils to a school on the basis of the parents' preferences and schools' published admissions criteria. In the latter case, the school 'chooses' which pupils should be admitted; this too should be an 'administrative' decision based on parents' preferences and the school's admissions criteria.

For the majority of schools (community and voluntary-controlled) the local authority is responsible for setting the admissions criteria and making the decision about which school the child attends, based on parents' expressed preferences and the criteria for the school in question. However, in the case of

voluntary-aided (mostly religious) schools and those that were formerly grant-maintained (now in the main foundation) the school itself is responsible for its own admissions.

Bodies responsible for admissions to schools are known as ‘admission authorities’ and comprise local authorities, voluntary-aided and foundation schools; these are required to admit children, on demand, up to the physical capacity of the school (except in the case of fully academic selective schools). In the event of the school being oversubscribed, with more applicants than places, the school’s admissions criteria are used to decide who should be offered a place.

This paper focuses on admissions to state-maintained secondary schools in London.¹ It explores two main issues. First, it examines the criteria and practices used in the event of there being more applicants than there are places available at a school, and in so doing explores the variation between schools with responsibility for their own admissions and those where admissions are controlled by the local authority. Second, the paper examines changes in admissions criteria and practices between 2001 and 2005; in the intervening period a variety of legislative and policy changes were introduced. Principal-agent theory is used heuristically in an attempt to explain the differing responses of schools and local authorities to the legislative and policy framework. It is argued that while the local authority acts broadly as intended as the agent of the government, schools acting as agents do not necessarily do so – at least not in relation to school admissions. This, it is argued, is because the regulatory mechanisms have been insufficient to motivate them to act as intended in the light of the other government policy goals and the incentives accompanying the market-oriented reforms.

The next section presents an outline of the legislative framework for school admissions in England; this is followed by an examination of the differing principal-agent relationships in the context of the admissions system. The research study and findings are then presented. Policy responses and a discussion of the key themes conclude the paper.

Legislation, guidance and secondary school admissions

Concerns about admissions to secondary schools led the Labour government, elected in 1997, to address these in the School Standards and Framework Act 1998. The Act established a new legal framework for school admissions. A key mechanism introduced was a Code of Practice on School Admissions. In addition, each local education authority was required to establish an Admissions Forum providing for admission authorities and other interested parties (such as church representatives, local authority representatives and parent governor representatives) to:

discuss the effectiveness of local admission arrangements, seek agreements on how to deal with difficult admission issues and advise admission authorities on ways in which their arrangements can be improved. Admission authorities...must have regard to any advice given by the forum for their area (Department for Education and Skills (DfES), 2003, para. 5.1).

Another mechanism was the appointment of Schools Adjudicators who have a specific role in seeking to settle local disputes concerning admissions policies and oversubscription criteria where it has not been possible to reach local agreement. These are independent of government and decisions they make are binding on all the parties involved and can only be challenged through judicial review. Disputes about admissions criteria relating to religious issues are taken by the Secretary of State for Education and Skills (the most senior government minister), not by Adjudicators (Department for Education and Employment (DfEE), 1999; DfES, 2003).

The legislation, accompanying regulations, Codes of Practice, Admissions Forums and Schools Adjudicator can be seen as an attempt to deal with the difficulties that had arisen from the establishment of a predominantly unregulated system of school admissions.

Policy and practice have evolved since 1997. In terms of the process of admission to secondary school, parents/carers must be allowed to express a minimum of three 'choices', or more accurately 'preferences' for publicly-funded schools for their child, generally at the age of 11 years, when they move from primary to secondary school (see DfES, 2007). Parents complete an application form provided by their local authority; for some schools, with responsibility for their own admissions, a supplementary information form must also be completed. If there are fewer applicants than places available at a particular school, all those expressing a preference are offered a place for their child.² However, if there are more applicants than places available, the school's published oversubscription (admissions) criteria and practices are used to determine which applicants are offered a place.

More generally, since 1988, there have been policy shifts in England. A quasi-market remains in operation, although there have been changes to the system of resource allocation, both from central to local government and from local authorities to schools (see Author). A high policy profile is still given to test and examination results and to 'league tables'. Indeed, a key policy goal is that within five years no secondary school should have fewer than 30 per cent of pupils achieving five or more General Certificate of Secondary Education (GCSE)³ passes at grades A* to C (Department for Children, Schools and Families (DCSF), 2007). Whilst the focus on examination performance remains, there is also a goal to reduce the achievement gap between children from low income families and their peers

and another to promote community cohesion and a cohesive society. These policy goals appear to be somewhat contradictory. Schools competing with one another is a goal likely to encourage individualistic, self-interested behaviour by schools, with the aim of schools maximising their league table position; such behaviour could include schools ‘selecting in’ some pupils and ‘selecting out’ others. The focus on social justice issues such as reducing the achievement gap may not sit easily with this goal, particularly in light of the negative consequences of segregated school systems on overall academic achievement as exemplified by the results of the Programme for International Student Assessment (OECD, 2001). Finally, the government focus on community cohesion, appears to be steering schools to work in a more collective way with the broader goal of fostering positive relations between different communities.

We now turn to a more detailed examination of the Codes of Practice on School Admissions and the role of the Schools Adjudicator between 1997 and 2006.

Codes of Practice on School Admissions

In this section we focus on key elements of the two Codes of Practice. Whilst admission authorities must comply with the law, legislation and statutory instruments, until 2007 they were only required to ‘have regard to’ the guidance given in the Code; having done so, they were able to set admissions criteria that did not comply with the Code, as long as they had good reasons for their actions (House of Commons Education and Skills Committee, 2004).

Our focus is on certain aspects of the Codes, concerned in broad terms with facilitating or otherwise equality of access, namely the general guidance about oversubscription criteria; social justice issues; selection by aptitude and ability; and interviews.

Establishing oversubscription criteria

The first Code of Practice came into force on 1 April 1999 (DfEE, 1999) and applied to arrangements leading to admissions from September 2000. In terms of the criteria to be used by admission authorities in cases where more parents had expressed a preference for a particular school than places were available, the Code noted that a admissions authorities had ‘a fairly wide discretion to determine their own oversubscription criteria provided these criteria are objective, fair, compatible with admissions and equal opportunities legislation...’ (1999, para. 5.2). It also gave some frequently used criteria considered to be acceptable including ‘sibling links, distance from the school, ease of access by public transport, medical or social grounds, catchment areas and transfer from named feeder schools, as well as parents’ ranking of preference.’ (para. 5.3). The general guidance was broadly similar in the second Code.

The admission authority has a fairly wide discretion in deciding what these [oversubscription criteria] should be, provided that:

- the criteria are not unlawful;
- the admission authority has properly considered the factors which it believes to be most important in ensuring that children receive an efficient and suitable education, and has had regard to the guidance in this Code;
- the criteria are clear, fair and objective and are published (DfES, 2003, para. A.51).

Social justice issues

Equality of opportunity

The first Code of Practice (DfEE, 1999) made specific reference to equal opportunities issues, noting that in light of the Sex Discrimination Act 1975 and the Race Relations Act 1976 ‘admission authorities should consider the possible impact, direct or indirect, on equal opportunities of their proposed oversubscription criteria’ (para 5.7) and stating that:

criteria which give preference to children whose parents had attended the school or followed particular occupations could disproportionately disadvantage ethnic minority, Traveller or refugee families who have more recently moved into the area...And it would not generally be good practice for admission authorities to set or seek to apply oversubscription criteria which had the effect of disadvantaging certain social groups in the local community...Examples would be explicit or implicit discrimination on the basis of parental occupation, employment, income range, standard of living or home facilities (para. 5.7)

The second Code of Practice (DfES, 2003) reiterated these points and also added in some additional criteria that could impact on equal opportunities. It also noted that criteria such as giving ‘preference to children or older siblings who had previously attended the school, or whose parents followed particular occupations, such as teachers, could disproportionately (even if unintentionally)’ disadvantage certain individuals who have recently moved into the area, noting that: ‘Such criteria have been determined by the Schools Adjudicator not to be in the interests of all local children and have been ruled out when subject to an objection’ (DfES, 2003, para. 3.12).

Looked after children

The second Code of Practice (DfES, 2003) made explicit reference to ‘looked after’ children, a particularly disadvantaged group. A looked after child is one who is in the care of a local authority or

provided with accommodation by that authority. The Code recommended that admission authorities give looked after children ‘top priority’ in their oversubscription criteria (para. 7.22).

Special educational needs

Both Codes addressed the situation relating to children with special educational needs; the two Codes did not differ substantively:

Children with statements of special educational needs that name a school in the statement are required to be admitted to the school that is named. The governing body...does not have the right to refuse admission. It is good practice for LEAs [local education authorities] to mention this in their composite prospectuses, so that parents of other children are aware (DfES, 2003, para. 7.20).

It is important to note that the admission of children with statements of special educational needs is carried out differently from the admission of other pupils; in the case where there is a statement (which carries with it additional resources) the school decides outside the normal admission round if it can meet the needs of the pupil concerned. Where special educational needs is mentioned in admissions brochures it is usually with reference to children with statements of special educational needs.

Community cohesion

The second Code of Practice stated that faith schools can make a contribution ‘to community cohesion by having admission arrangements that are inclusive of other faiths and of all elements of population of their local area’ (DfES, 2003, para. 3.10).

Selection by aptitude and ability

The Schools Standards and Framework Act 1998 ruled out the introduction of any new selection on the basis of academic ability; however, existing selection by ability or aptitude was allowed to continue if in place at the beginning of the school year 1997/98. New selection on the basis of aptitude in a prescribed subject was (and still is) also allowed in limited circumstances where the school has a specialism and where the proportion selected is no more than 10 per cent of the school’s intake.

In the School Standards and Framework Act 1998 ‘ability’ is defined as ‘either general ability or ability in any particular subject or subjects’ (section 99). Aptitude is not defined, although both Codes state ‘a pupil with aptitude is one who is identified as being able to benefit from teaching in a specific subject or who demonstrates a particular capacity to succeed in that subject’ (DfEE, 1999, para. 5.15; DfES, 2003, para. 7.11) However, it is not clear how demonstrating a ‘capacity to succeed’ differs from

'ability', hence previous research has focused on either aptitude or ability in a particular subject area in relation to partial selection (Author).

Interviews

The first Code of Practice (DfEE, 1999) allowed parents to be interviewed by church schools to 'assess religious or denominational commitment' (para. 5.25). Parents were not, according to the Code, to be interviewed for any other purpose at any part of the application or admissions process for day schools.⁴ The second Code (DfES, 2003) restricted interviews further, stating: 'for the admission round leading to September 2005 intakes and subsequent admissions, no parents or children should be interviewed as any part of the application or admission process' to day schools (para. 3.16).

The Schools Adjudicator

The Schools Adjudicator intervenes in the admissions process where it has not been possible to reach local agreement on admissions (Author). The number of objections to admission arrangements of all kinds have shown an upward trend since 2001/02, increasing from 31 to 245 in 2005/06 (Office of the Schools Adjudicator, 2006). The objections have varied, but amongst those most frequently made over the period in question, were schools not giving priority to looked after children, giving priority to the children of staff or siblings of former pupils and objections to partial selection by aptitude. The Annual Report for 2002/03 (Office of the Schools Adjudicator, 2003) noted: 'It would appear that many admission authorities have not yet fully taken account of the new Code' (2003, p. 1). However, by 2006, it was noted:

It is evident that many local authorities and admission forums are now reviewing admission arrangements of all schools in their areas and objecting to those arrangements that seem to them to offend against the Code of Practice. This is to be commended (Office of Schools Adjudicator, 2006, p. 1).

A total of ten judicial reviews of determinations made by the Schools Adjudicator were made between 2000 and 2006 (Office of the Schools Adjudicator, 2007). The most significant was an objection made to the Schools Adjudicator about the use of interviews in one voluntary-aided school. Following an investigation, the Adjudicator directed the school in question not to interview prospective pupils and parents (Office of the Schools Adjudicator, 2004a).

However, the school governors successfully challenged the decision in December 2004. At the judicial review it was argued that the school had 'had regard' to the Code (as required) but then decided not to adhere to the guidance. The school governing body commented that had the government intended to

ban interviewing it would have done so through primary or secondary legislation not via quasi-regulatory guidance (see Office of the Schools Adjudicator, 2004b). This is a particularly important point in terms of the extent that quasi-regulation can meet the desired objectives of government and one to which we will return.

Differing relationships between principal and agent

One way of examining the relationship between central government, local authorities and schools is to use a principal-agent framework. Using such an approach, we can conceive of the principal as an institution with particular objectives, with agents being needed to implement activities to achieve these objectives. However, the agents, although they may share some of the principal's objectives 'also have other (usually self-regarding) interests, such as increasing their own income... Agents also have more information about what they are doing than does the principal, giving them an advantage which could allow them to pursue their own interests' (Bossert, 1998, p. 1516).

More explicitly in the context of publicly-funded education in the USA, Ferris (1992) proposes that:

Public education can be viewed as a series of principal-agent relationships. The primary responsibility for education in the American federal system rests with the states. Citizens as principals enter into contracts with their state governments to deliver educational services. Yet the states have traditionally delegated much of public education policy to local school districts. Thus, the state-school district relationship can be viewed as a second principal-agent relationship. Within the school district, the school board delegates authority to the central district staff to implement its decisions, providing another principal-agent relationship (Ferris, 1992, p. 334)

The principal-agent approach provides a useful heuristic for examining school admissions. In England, the primary responsibility for education rests with central government, but historically the government has delegated responsibility for delivery to local authorities. With the education reforms that took place in the 1980s, the power of local authorities was reduced and more responsibility passed to individual schools, particularly those that opted out of local authority control. An important aspect when there is decentralization from local authorities or central government to schools is that there are 'mechanisms, such as incentives and regulations to ensure that the school acts responsibly in its delegated role' (Ferris, 1992, p. 333).

A major concern with principal-agent relationships, is that an agency problem may arise if the principal and agent have different objectives and the principal does not have sufficient information to evaluate the performance of the agent. Thus, if the objectives of the agent are different, the agent has an informational advantage and a principal-agent (agency) problem exists (Ferris, 1992).

In the case of school admissions in the English context, the policy context is such that there may well be different objectives for individual schools and for local authorities. Using a principal-agent framework, central government can be viewed as the principal. There are two agents: the local authority is the agent with respect to community and voluntary-controlled schools as it is responsible for the allocation of pupils to these schools. Local authorities are likely to perceive themselves as the agent of government given the very clear structures in which they operate vis-à-vis central government, and the extensive regulatory framework that guides their activities.

The local authority is not, however, the agent for schools that have responsibility for admissions (voluntary-aided and foundation): in this case the individual school is the agent. Such schools may not necessarily see themselves in this way. Voluntary-aided schools may, for example, see themselves as agents for the church as opposed to the government. Nevertheless, given the regulatory framework in which they too operate and the fact that virtually all of their resources are from central government (except for 10% of capital costs in the case of voluntary-aided schools), it is not unreasonable to argue that schools with autonomy over admissions are also agents of government in respect of the admissions process.

As the incentives for local authorities and individual schools vary, the consequences in terms of how they respond to legislation and to guidance (quasi-regulation) are likely to vary. The motives of individual schools are likely to be determined by the fact that they, like other schools, are funded on a predominantly per capita basis, but they have opportunities to select who is admitted. In a competitive environment, schools that have the opportunity to do so, may seek to admit higher attaining pupils in order to maximize their examination league table position. Given the strong links between prior attainment and later attainment the incentive, we hypothesize, is to admit pupils who are high attainers prior to admission to secondary school.

However, information on prior attainment is not likely to be available to individual schools, so given the well-established links between socio-economic status and attainment, we can hypothesize that schools will seek to select pupils who come from supportive homes, where parents are from higher

socio-economic groups (this is likely to be a proxy for attainment); evidence supports the selective nature of schools that are responsible for their own admissions (Author).

If this hypothesis is correct we might expect to see different types of admissions criteria and practices used by schools with responsibility for admissions from those where responsibility rests with the local authority, run by a democratically elected council. The latter are likely to be motivated to act in accordance with government regulations and guidance and so avoid negative sanctions when inspected for the quality of provision by the relevant regulatory body. We might also expect to see variation in the extent to which schools whose admissions are controlled by different bodies respond as the legislative context changes.

Research study and analysis

Research questions

The research reported here focuses on the admissions criteria and practices used for admission to secondary schools in London for 2001 and 2005. There were two key objectives:

- to investigate the admissions criteria/practices used by state-maintained (public) secondary schools in London in 2005, including mechanisms used by schools with responsibility for admissions to obtain additional information about applicants;
- to make comparisons between admissions criteria and practices in 2001 and 2005, in light of new guidance on the admissions process.

A focus on London is of particular interest in this context, not only because of its size, but also because it is diverse – it has high levels of disadvantage within the maintained school sector, especially in inner London. A government report focusing on London secondary schools, noted that at school level there is ‘tremendous variation between the prior attainment of the pupils they take in. This variation is associated with levels of deprivation and produces a steep hierarchy of schools’ (DfES, 2005, p. 9; see also Author). Moreover, research indicates that fewer parents in London gain their first choice school than in England as a whole (72% versus 85%) (Coldron et al., 2008; see also Flatley et al., 2001).

Whilst it might be argued that London is atypical of England, the secondary school quasi-market in London is highly developed insofar as it is diverse with ostensibly considerable ‘choice’ for parents. There is school diversity, in line with government policy rhetoric, but along with diversity, in the English context, is school autonomy over admissions. The role of schools in deciding their own

admissions criteria and administering and allocating places to prospective pupils is hypothesised to be a key causal factor – albeit one of several – in maintaining a segregated secondary school system.

Methods

The research involved obtaining information on the presence or absence of individual admissions criteria and practices used by each state-maintained secondary school in London, for pupils entering in year 7 (age 11) in September 2001 and September 2005. For admissions in 2001, data were obtained from information provided by the 32 local authorities in London with state-maintained secondary schools and from individual schools with responsibility for admissions (voluntary-aided and foundation) where information was not provided in local authority brochures. Information on a total of 382 out of 387 secondary schools in London officially classified as ‘comprehensive’ was used for the analysis.⁵ The schools for which no information was available were foundation/voluntary-aided schools that were not included in local authority brochures and did not provide admissions information when contacted by the research team (Author).

Data on admissions criteria and practices for state-maintained secondary schools for September 2005 were obtained from information provided by the 32 local authorities in London with state-maintained secondary schools; although local authorities had, at this time, a statutory responsibility to publish these, in some cases inadequate information was provided about schools responsible for their own admissions (voluntary-aided and foundation) so individual schools were contacted directly. A combined database, consisting of the admissions criteria and practices of the 362 state-maintained secondary schools in London for which admissions data were available for both 2001 and 2005 was set up.

The study relating to admissions in 2005 also involved contacting all secondary schools responsible for their own admissions and asking them to send a copy of any supplementary information form parents were asked to complete. Altogether forms were obtained for 41 schools, just under a quarter of the total number of secondary schools with responsibility for admissions in London in 2005 (N=173). No information is available on how many schools with responsibility for their own admissions require an additional form to be completed.

Results

The results section is sub-divided into admissions criteria/practices used in 2005 and opportunities for selection; and a comparison of admissions criteria/practices used in 2001 and 2005.

Admissions criteria/practices in 2005

Our analysis of the criteria and practices used revealed differences between schools of different types as shown in Table 1.

Table 1 about here

As shown in Table 1, high percentages of all schools gave priority to pupils with a sibling at the school, proximity to the school, children in care and those with medical or social needs. Priority criteria were determined in different ways: for children in care, some local authority application forms asked for a letter of confirmation from the social worker;⁶ for medical/social needs, professional evidence was generally required. Fewer schools reported giving priority to children with special educational needs; however, as noted above these data need to be treated with caution as the admissions process in relation to children with higher levels of special educational needs differs from that of those without such needs.

Of these relatively frequently occurring criteria, there were nevertheless statistically significant differences between schools, with fewer voluntary-aided schools giving priority to each of these, and in some cases fewer foundation schools (both these types of schools have control over admissions). Religious criteria were only used by voluntary-aided schools (not all voluntary-aided schools have a religious character so not all use these).

Certain criteria were used more frequently by schools with control over their admissions than those without, namely: the pupil having ability/aptitude in subject area, having high general ability, being the child of a former pupil, having a strong family connection to the school, pastoral or compassionate factors, the child's primary school record and interviews/pre-admission meetings with pupil/parent. However, the criterion giving priority to the children of school employees was used by similar proportions of schools of different types.

A separate analysis of the supplementary information forms used by schools responsible for their own admissions showed that these offered schools additional opportunities to 'select out' or 'select in' particular pupils.⁷ One of the most significant findings was that the supplementary information forms tended to be long – just over two-fifths of the forms (18) were four or more pages in length. For a similar proportion (17 forms), the forms allowed four centimetres or more for parents/carers to give reasons why they wanted their child to attend the school and/or why they were applying to a Catholic school and/or to support their application.⁸ Allowing this amount of space would enable schools, if

they so wanted, to ascertain parents'/carers' English proficiency and to make judgements about their level of education, which could, in theory, disadvantage some groups of parents.

Supplementary information forms asked for different types of information. Of the 41 forms that were available, 37 were for admission to voluntary-aided schools and four for admission to a foundation school. Virtually all of the religious schools asked for a reference form from the vicar/religious leader of the place of worship attended. However, in addition to information related to religion, a variety of other types of information was sought as shown in Table 2.

Table 2 about here

Twelve schools (just under three out of ten) asked for details of the schools attended/occupation of all or older siblings.⁹ Ten schools (around a quarter) asked for the names of other secondary schools applied to. Six schools (just over one in ten) requested details of parents' country of origin or whether the child had English as an additional language. Other information, unrelated to admissions criteria was sought by a small number of schools: two schools asked for information about parents' occupations; and the same number of schools asked for information about the child's hobbies; one school sought information as to whether the child was eligible for free school meals and on whether the family lived in temporary housing.

A minority of schools in their supplementary information forms thus requested information that had no apparent bearing on the school's admissions criteria. Some of the information could be seen to enable schools to select in or out certain pupils (e.g., the information relating to the pupil having English as an additional language, being eligible for free school meals or details of the parents' occupation).

Admissions criteria and practices in 2005 and in 2001

We also examined the changes that had taken place in terms of admissions criteria and practices used in 2005 compared with 2001, given the changes that had taken place with a revised Code of Practice on School Admissions (DfES, 2003) and the increased number of objections made to the Schools Adjudicator.

As shown in Table 3, similar percentages of schools used the majority of criteria in both 2001 and 2005. However, there were some clear differences. In particular, many more schools gave priority to children in care in 2005. More schools also gave priority to the pupil having aptitude/ability in a subject area.

However, fewer schools prioritised the pupil being the child of a school employee/former pupil, or having a strong family connection to the school.

What is particularly interesting, however, is the variation between different school types in terms of criteria/practices used. In community and voluntary-controlled schools, where admissions are controlled by the local authority, the proportion of schools giving priority to children in care increased from 4 per cent to 95 per cent. And the percentage of schools giving priority to pupils whose parent was an employee of the school decreased from 13 per cent to 5 per cent (see Table A1 in Annex).

For voluntary-aided schools there were more differences between the two years. There was an increase in the percentage of schools giving priority to children in care (from zero in 2001 to 74 per cent in 2005), to medical/social needs (42 to 54 per cent) and to special educational needs (18 to 26 per cent). There was a very marked *reduction* in the use of interviews, which dropped from 52 per cent in 2001 to 6 per cent in 2005.¹⁰ There was also a decrease in the proportion of schools giving priority to children of former pupils (14 to 4 per cent). However, compassionate factors increased from 8 to 12 per cent. The percentage of schools giving priority to pupils with a religion other than that of the school concerned increased from 32 to 48 per cent (see Table A2 in Annex).

In foundation schools, amongst the key changes were in the percentage of schools giving priority to children in care, which increased from 2 to 74 per cent. More gave priority to children with special educational needs (16 to 27 per cent) and the proportion giving priority to pupils with aptitude/ability in a subject area increased from 7 to 10 per cent. The percentage of schools giving priority to pupils whose parents were school employees decreased from 26 to 10 per cent, and to pupils who were children of a former pupil from 27 per cent to 5 per cent (see Table A3 in Annex).

Policy responses and discussion

Increasing school autonomy has been seen as one of the ways of raising school achievement, and giving schools control over their own admissions has also been seen by proponents of school choice as an important element of these reforms (e.g., Chubb and Moe, 1990). However, the research reported here has highlighted the problematic nature of giving autonomy to schools over who is admitted to the school: in short, it appears to allow 'school choice' as opposed to 'parental choice'. Notwithstanding the general problems associated with allowing schools autonomy to administer their own admissions, the quasi-regulatory mechanisms introduced in England have clearly had a positive impact in terms of schools' published admissions criteria (we know relatively little about the actual administrative process undertaken).

However, it is clear that some admission authorities – in the main schools responsible for their own admissions – have not altered their admissions criteria and practices in accordance with the guidance provided. To some extent this could be attributed to the guidance being non-statutory. The government has acted to try and address the concerns over schools not adhering to guidance. Regulations introduced in 2006 require admission authorities to give ‘first priority in its oversubscription criteria to all relevant looked after children’ (OPSI, 2006, section 3). Subsequently, the 2006 Education and Inspections Act introduced a new School Admissions Code (DfES, 2007) which came into force in February 2007 and applies to admissions from September 2008. This differs from the previous Codes in that there are certain provisions that are mandatory; these must be complied with and certain practices must not be used: failure to comply with these provisions means that the body concerned is in breach of its statutory duty to act in accordance with the provisions in the Code. Failure to comply may result in an objection being made to the Schools Adjudicator or a complaint to the Secretary of State for Education and Skills (DfES, 2007).

In addition, the 2006 Education and Inspections Act prohibits interviews ‘where the interview is to be taken into account...in determining whether the applicant is to be admitted to the school’ (part 3, section 44). This can be seen as a response to the Schools Adjudicator’s determination, requiring interviews at one voluntary-aided school to be discontinued, being quashed at judicial review (see above) and ongoing concerns about the use of interviews. Concerns about religious segregation and religious schools, also led to the inclusion in the 2006 Education and Inspections Act of a new duty for school governing bodies to ‘promote community cohesion’ (part 3, section 38) with a concomitant role for the Chief Inspector (of the Office for Standards in Education, the body with responsibility for school inspection in England) to report on ‘the contribution made by the school to community cohesion’ (part 8, section 154). Finally, the legislation requires local authorities to ensure fair access to educational opportunity (part 1, section 1).

It is undoubtedly the case that primary and secondary legislation have been introduced because the government is seeking to ensure that its agents – local authorities and in particular schools with control over admissions – behave as intended in terms of their admissions policies and practices. However, it is possible that individual schools, as admission authorities will seek to circumvent guidance if they feel that there are opportunities to do so and the incentives are great enough: indeed some schools, instead of carrying out interviews held pre-admission ‘meetings’ in 2005.¹¹ It is also interesting to note that we found that schools are becoming more responsive to guidance and are moving from covert to more

overt forms of selection – with more schools selecting a proportion of pupils on the basis of aptitude in a subject area than was the case previously.

To conclude, overall, the legislative and quasi-legislative reforms appear to be having some impact on schools' published admissions criteria and practices. However, because of the different incentives and opportunities, including information asymmetry (i.e., more information being available to one party than another) for schools of different types, some have been less responsive to government policy than others. It seems clear that where there are opportunities for schools to seek to manipulate their intake, given particular incentives, some will do so. Whether the new regulatory framework will make a significant difference remains to be seen. And even though published admissions criteria might be expected to change in line with the new regulatory framework it is not clear whether school composition will change significantly: in London, there are fewer children known to be eligible for free school meals in schools responsible for their own admissions and higher performing children are admitted to them (Author). In the event of schools not responding to this new framework as intended, in terms of their policies and practices, the government may seek to regulate further; it could for example, require another body to take responsibility for the administration of the admissions process (some local authorities already act on behalf of individual schools) or by closer monitoring of policy and practice at the level of the individual school: with greater information being provided for the principal, opportunities for the agent to act in unintended ways are likely to be reduced. As Besley and Ghatak (2003) note:

The accountability structure defines the rules of the game, i.e. the chain of command and control, and the formal authority by which each principal and agent is governed. As in all such relationships there are informational asymmetries and monitoring problems, and inducing agents to act according to the objectives and coordinating the activities of these various actors are the key issues of organizational design (p. 238).

However, the actions of schools with responsibility for admissions are unsurprising, given differing government policy goals. A very high profile is given to 'league tables' and selective admissions policies have been found to be associated with higher examination performance (Author). Whilst the government, as principal, wishes its agents to act as it intends in relation to admissions, schools with responsibility for admissions, acting as agents, can be seen to act as government intends in relation to *another objective*, namely their 'league table' position. This overriding objective, a function of the market-oriented reforms, is likely to be hard to displace unless structures, legal instruments and incentives change radically.

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Table 1. Selected admissions criteria used in comprehensive secondary schools of different types (2005)

Criterion or practice used ...	All secondary schools N=362	Community and voluntary-controlled schools N=197	Voluntary-aided schools N=103	Foundation schools N=62
Pupil has a sibling at the school	96%	100%	85%	100%
Pupil lives nearer the school	95%	100%	85%	98%
Pupil in care	85%	95%	74%	74%
Pupil has medical/social needs	70%	82%	54%	58%
Pupil has special educational needs	47%	64%	26%	27%
Religious criteria	25%	0%	88%	0%
Pupil attends 'feeder' primary school	18%	15%	23%	19%
Religion (different from school)	14%	0%	48%	0%
Pupil lives in school's catchment area	8%	8%	10%	5%
Pupil has ability/aptitude in subject	7%	3%	13%	10%
Pupil is child of school employee /governor	6%	5%	5%	10%
Pastoral factors	4%	0%	14%	0%
Pupil has high general ability	3%	2%	2%	8%
Compassionate factors	3%	0%	12%	0%
Interview/meeting with pupil/parent	2%	0%	6%	0%
Pupil is child of a former pupil	2%	0%	4%	5%
Pupil has family connection to school	1%	0%	3%	0%
Pupil's primary school report	1%	0%	3%	0%

Notes

There were only four voluntary-controlled schools and admissions to these are controlled by the local education authority; for this reason they have been grouped with community schools.

Statistically significant differences (0.05 level or beyond) between different school types are emboldened.

This is not the full listing of all criteria used.

Table 2. Information sought via application forms

Information sought	Number of schools N=41	Percentage of schools N=41
School attended/occupation of all/older siblings	12	29
Other secondary schools applied to	10	24
Parents' country of origin	6	15
Child has English as an additional language	6	15
Parents' marriage certificate	4	10
Primary school reference	3	7

Table 3. Selected admissions criteria/practices for London secondary schools (excluding grammar schools) for admission in 2001 and 2005

Criterion or practice used ...	Secondary schools	Secondary schools
	2005 N=362	2001 N=362
Pupil has a sibling at the school	96%	93%
Pupil lives nearer the school	95%	87%
Pupil in care	85%	2%
Pupil has medical/social need	70%	71%
Pupil has special educational needs	47%	43%
Religion	25%	27%
Pupil attends a 'feeder' primary school	18%	16%
Religion (not that of the school)	14%	9%
Pupil lives in school's catchment area	8%	6%
Pupil has ability/aptitude in subject area	7%	5%
Pupil child of an employee/governor of school	6%	14%
Pastoral factors	4%	4%
Pupil has high general ability	3%	4%
Compassionate factors	3%	3%
Interview/pre-admission meeting with pupil /parent	2%	15%
Pupil is child of a former pupil	2%	10%
Pupil has strong family connection to school	1%	3%
Pupil's primary school report	1%	0%

Notes

There were only four voluntary-controlled schools and admissions to these are controlled by the local education authority; for this reason they have been grouped with community schools.

Statistically significant differences (0.05 level or beyond using sign test) between admissions criteria used in 2001 and 2005 are emboldened.

Annex

Table A1. Selected admissions criteria/practices for London community and voluntary-controlled secondary schools (excluding grammar schools) for admission in 2001 and 2005

Criteria and practices used ...	Community/ voluntary-controlled schools 2005 N=197	Community/volun tary-controlled schools 2001 N=197
Pupil has a sibling at the school	100%	100%
Pupil lives nearer the school	100%	94%
Pupil in care	95%	4%
Pupil has medical/social need	82%	89%
Pupil has special educational needs	64%	66%
Pupil attends a 'feeder' primary school	15%	17%
Pupil lives in school's catchment area	8%	7%
Pupil has ability/aptitude in subject area	3%	2%
Pupil is child of employee/governor of school	5%	13%
Pastoral factors	0%	0%
Pupil has high general ability	2%	2%
Compassionate factors	0%	1%
Interview/meeting with pupil /parent	0%	0%
Pupil is child of a former pupil	0%	3%
Pupil has strong family connection to school	0%	0%
Pupil's primary school report	0%	0%

Statistically significant differences (0.05 level or beyond using sign test) between admissions criteria used in 2001 and 2005 are emboldened.

Table A2. Selected admissions criteria/practices for London voluntary-aided secondary schools (excluding grammar schools) for admission in 2001 and 2005

Criteria and practices used ...	Voluntary-aided schools 2005 N=103	Voluntary-aided schools 2001 N=103
Religion	88%	92%
Pupil has a sibling at the school	85%	79%
Pupil lives nearer the school	85%	64%
Pupil in care	74%	0%
Pupil has medical/social need	54%	42%
Religion other than that of the school	48%	32%
Pupil has special educational needs	26%	18%
Pupil attends a 'feeder' primary school	23%	17%
Pupil lives in school's catchment area	10%	6%
Pupil has ability/aptitude in subject area	13%	10%
Pupil is child of employee/governor of the school	5%	7%
Pastoral factors	14%	16%
Pupil has high general ability	2%	4%
Compassionate factors	12%	8%
Interview/meeting with pupil/parent	6%	52%
Pupil is child of a former pupil	4%	14%
Pupil has strong family connection to school	3%	10%
Pupil's primary school report	3%	1%

Statistically significant differences (0.05 level or beyond using sign test) between admissions criteria used in 2001 and 2005 are emboldened.

Table A3. Selected admissions criteria/practices for London foundation secondary schools (excluding grammar schools) for admission in 2001 and 2005

Criteria and practices used ...	Foundation schools	Foundation
	2005 N=62	schools 2001 N=62
Pupil has a sibling at the school	100%	98%
Pupil lives nearer the school	98%	98%
Pupil in care	74%	2%
Pupil has medical/social need	58%	65%
Pupil has special educational needs	27%	16%
Pupil attends a 'feeder' primary school	19%	13%
Pupil lives in school's catchment area	5%	7%
Pupil has ability/aptitude in subject area	10%	7%
Pupil is child of employee/governor of school	10%	26%
Pastoral factors	0%	0%
Pupil has high general ability	8%	10%
Compassionate factors	0%	3%
Interview/ meeting with pupil/parent	0%	0%
Pupil is child of a former pupil	5%	27%
Pupil has strong family connection to school	0%	2%
Pupil's primary school report	0%	0%

Statistically significant differences (0.05 level or beyond using sign test) between admissions criteria used in 2001 and 2005 are emboldened.

¹ The paper does not address admissions to publicly-funded but independent academies.

² With the exception of fully academically selective grammar schools.

³ GCSEs are generally taken at the end of compulsory education in separate subjects. Five or more passes at grades A* to C are the normal requirement for progression to study General Certificate of Education Advanced (GCE A) levels, which are normally required for progression to higher education.

⁴ As opposed to boarding (residential) schools.

⁵ The 19 fully academically selective grammar schools, all in outer London, were excluded from the analysis reported here.

⁶ With reference to children in public care ('looked after' children), some local authorities state that this is as defined in Section 22 of the Children Act 1989 and may say that this includes foster children; one local authority states that children in public care includes those living in children's homes, foster care, unaccompanied minors and children in other emergency provision.

⁷ We did not include schools that merely asked if parents wanted their child to be considered for a specialist place and asked for no additional information.

⁸ The space allowed ranged up to nine-and-a-half inches.

⁹ One school asked for details of all other children in the family and the primary and secondary schools attended (with dates); another asked for names of all of the applicant's siblings, together with the secondary school attended/formerly attended; and if of primary school age, the name of the primary school. Another school asked for names of brothers/sisters in family, age and school/occupation.

¹⁰ 'Pre-admission meetings' were also included in this category in 2005.

¹¹ For example: 'Under our Admissions Policy, you will be sent a supplementary information form, in the academic year preceding the proposed year of entry, which you must complete. This form will include a 'tick box' to enable you to request a meeting in order to demonstrate the degree of your religious commitment and practice' and: 'Parents will be asked to complete a written statement of support and applicants will be invited to the school to complete the second part of the application form' (Author).