

SUMMER BORN REPORT: Compulsory School Age in England has been Lowered to 4 through an Unfair and Unlawful Summer Born Admissions Process

Parents from the campaign group *Flexible School Admissions for Summer Born Children* say the February 2012 School Admissions Code is not fit for purpose and has contributed to a detrimental 'back-door' lowering of the compulsory school age (by up to a whole year for some children) from 5 to 4 years old. Because the Code does not specifically prescribe the way in which summer born children can enter Reception class at compulsory school age, laws that protect the rights of children and parents are being ignored, leaving no real choice, and no right of appeal. New summer born advice published by the Department for Education in July 2013 was intended to clarify the Code, but this is now leading to further confusion and unnecessary complexity. Despite full knowledge of widespread problems, the Government is averse to taking the necessary action of amending its ambiguous Code, and as a consequence, school admissions remain a postcode lottery for *The Children Policy Makers Forgot*.

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"We are not campaigning for a change in the law. We just want the right to make use of the flexibility that already exists within the law, and since admission authorities focus almost exclusively on the Government's Code, then the Code needs to change so that it reflects and represents primary legislation more clearly and accurately. Thousands of parents are forced to choose between relinquishing their child's statutory right to start school at age 5 or losing a whole year of primary education and any real chance of a place in their preferred school."

SUMMARY

- Consecutive government admission codes have failed to adequately include and explain the primary legislation relevant to summer born children starting school **in the term following their 5th birthday**, leaving most parents with the choice between a school start at age 4 or entry into Year 1 at age 5 with their child losing one whole year of their primary school education – the class the Government describes as *"critical"* for children.
- The admissions process is unclear, inequitable and unfair – and worse, the Code provides no right of appeal for parents of summer born children who will be **forced to start school in Year 1 instead of Reception class** in 2014.
- **Unlawful policies and unfair practices** by admission authorities are widespread, with a blatant disregard for each child's right to a full, effective education, and with decisions on year group entry to school that are based on strict chronological cohorts instead of a child's best interests and in accordance with a parent's wishes.
- The Government has known about these unlawful practices for more than a year, but its failure to act effectively with a consistent, national strategy is woefully inadequate given the applications deadline of January 15, 2014. Ministers continue to insist **on abdicating responsibility to >7,500 local admission authorities**, despite ever growing evidence that the decisions being made are inconsistent, and contrary to parents' wishes.
- Throughout 2013, parent campaigners, solicitors, the *Office of the School Adjudicators* and the charity *Bliss* all called on the Government to issue **further guidance** or advice for a school start at age 5 but it has so far refused.

"We want children to be in school learning as quickly as possible." January 2012
"All children must start school by the time they reach their fifth birthday." March 2013
The Rt Hon Michael Gove MP, Secretary of State for Education

To err is human – or a Freudian slip? Readers can decide for themselves, but Mr. Gove's recanted 2013 error above is undoubtedly indicative of the almost universally held belief and pervasive myth in England that all children who want access to a full primary school education must now start school at age 4, and not age 5.

The provision of choice for parents who wish to enrol their children in school *earlier* than compulsory school age has directly led to the erosion of choice for parents who wish to wait until their child reaches this age.

This report has been written by two parent campaigners who were told by separate admission authorities that their summer born children must join Reception class at age 4 or be placed straight into Year 1 at age 5 unless they could demonstrate 'exceptional reasons' why this should not be the case. They knew this was not in their sons' best interests, and following months of investigation and research, discovered that vast numbers of children (and not just summer born) are being effectively forced, against their parents' wishes, and despite primary legislation, to start school *prior to* compulsory school age. In a democratic EU member state, and regardless of the current debate about the best age to start formal education, this erosion of children's and parents' statutory rights is **A NATIONAL SCANDAL**.

Hull and Melson reveal how years of maladministration by consecutive government departments responsible for education has led to inaccurate presentation, misuse, avoidance and misinterpretation of primary legislation by admissions authorities, local authorities and MPs. Countless children (have been and still) are being *forced* to start school prior to compulsory school age, or else face losing an entire year of their primary school education if parents refuse to relinquish their child's legal right. In a bid to resolve this issue, following pressure from parent groups, in July 2013 the Department for Education (DfE) published new 'Advice' on summer born children (i.e. children born between April 1st and August 31st) and set up a *Working Group on Admissions* to handle the influx of complaints and growing criticism. In some cases, where individual parents have contacted the DfE and alerted it to local cases of admissions authorities acting unlawfully, department officials have offered to contact schools and councils and ensure that unlawful published policies are changed. However, despite the DfE's promise to 'encourage' compliance with its latest advice, the advice itself has no teeth, ambiguity in the 2012 Code remains, and therefore admission authorities are still at liberty to overrule parents' wishes regardless. With 152 local education authorities and around 7,500 individual school admission authorities in England, there is a completely inconsistent and ineffective approach to summer born admissions – different year group decisions for the **same** child are being made by different schools and LEAs. Furthermore, most parents are not even aware of the *Working Group on Admissions'* existence, which all means that despite resolute assertions from the Parliamentary Under Secretary for Education in September 2013 ("*What we want to do is to empower parents... It should be the parents who are the primary decision-makers when it comes to deciding which route is most appropriate for their child and which environment will enable their child to thrive. We are absolutely clear that parents should be able to say to a school, "We want our child, who is aged five, to enter reception", if they feel that that is in the best interests of their child"*), **the reality for parents is shockingly different**.

“The School Admissions Code ensures a fair and straightforward admissions system that promotes equity and fair access for all.”

This is what the DfE assures all parents of on its website. However, the information provided in this report should seriously call into question the accuracy of such a statement.

The authors of this report present, first briefly, then in more detail, what the law says, what the problem is, why it exists, how it came about, and what needs to be done to fix it. The status quo is unfair, unacceptable, and in a number of cases, completely unlawful. If the Government does not fully address this problem, and fast, it could potentially face challenges from parents whose children have been adversely affected by a forced early start in school that was not in their child’s best interests and was against their wishes.

This report will show how the availability of choice for parents who wish to enrol their children in school early has gradually evolved into a compulsory school start at age 4 for *all* children, and while this may suit the Education Secretary’s philosophy of all children in school as soon as possible, the Government still has a duty to ensure that admissions decisions are equitable and consistently made in order to ensure that the best interests of children are a primary consideration, in accordance with primary legislation and wider EU legislation.

The report also contains numerous examples (p.35-39 and p.55-56) of parents’ experiences battling with local admission authorities, and two worth highlighting here are those below – where in both cases, the parents involved say they made the DfE aware of their issue, but no direct action or intervention was taken:

1. ***Financial and Psychological Impact*** – A single, working mother, with a child born on August 31st, was repeatedly refused the opportunity to enrol him in Reception class at age 5 because of an unlawful policy being in place in 2012, so she took out a high interest loan to pay for his entry to 2013 Reception class at a private school. She cannot afford to continue this private route (which is the go-to fix for parents of summer born children who *can* afford it, albeit often with sacrifices) and she hopes that her son’s transition to Year 2 at age 6 (still missing one whole year of his education) might be easier for him to cope with than Year 1 at age 5. English is the mother’s second language, and after a year-long battle with her local council she says, *“I have little energy or even the mental health needed to pursue this battle for yet another year. This whole process has been extremely stressful for us and I’d rather focus my strength on getting [my son] ready to join the ‘chronological’ cohort in Year 2 if needed”*.
2. ***Inconsistency and Unpredictability of Different Schools*** – Parents of a summer born child who had just completed her primary school education (Year 6) in Scotland, and who were in possession of a letter from the primary head teacher outlining educational challenges in their daughter’s learning, purposefully bought a home in the catchment area of their preferred school in England only to be told that their daughter must skip Year 7 and join Year 8 in 2012 as this would be her ‘correct chronological peer group’. This was unacceptable to the child’s parents, but their objections to the decision and letters to their own MP and an Education Minister were to no avail so they enrolled their daughter in a school with a lower reputation and a much further distance away but where the head teacher agreed that a Year 7 entry was indeed in the child’s best interests. The father says, *“The difficulties for summer born children can crop up unexpectedly later in school life and not just at the start. The Government’s reply is that local authorities deal with summer born issues on a case-by-case basis and that it would rather leave these decisions to so called education professionals, i.e. the schools. This approach is an*

abdication of responsibility on the part of the Government and it is wrong because it leads to huge inconsistencies across the UK that are unacceptable."

Fundamentally, parents of summer born children are being told at a local level that if they want their child to experience Reception class, and to have access to the full 7 years of primary school education, they must enrol their child at age 4. If they wait until their summer born child reaches compulsory school age before enrolling them in school (i.e. they make an application for entry in the September of the academic year in which children who started *prior* to compulsory school age are starting in Year 1), their child must join Year 1 too (or not, if places at the preferred schools are already full) and miss out on Reception class altogether – all unless '*exceptional circumstances*' can be evidenced, and even though there is no requirement in legislation for parents to supply any such 'evidence'.

IMPORTANT NOTE:

In light of recent revelations that a number of schools and LEAs had unlawful admission policies in place, there has been a concerted effort to change any unlawful wording in published policies (the July 2013 stated clearly that "*It would be unlawful for an admission authority to have a blanket policy which says that summer born children who start school in the September after their fifth birthday will be admitted to year 1.*"), but in the vast majority of summer born cases, where the parent is unable to provide '*documented evidence*' of special needs or developmental problems in their child, the Hobson's choice remains the same. A normally developing summer born child starting school at compulsory school age will be expected to join their '*correct chronological year group*' (not a legal definition) regardless of the rights afforded them in national and EU legislation.

Both the DfE and local admission authorities appear to have forgotten the following guidance contained within the 2012 School Admissions Code:

"Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered."

"Admission authorities are responsible for admissions and must act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions¹⁰, and relevant human rights and equalities legislation." (10 The main provisions relating to admissions are in Chapter 1 of Part 3 of the SSFA 1998)

Given the information provided on pages 19-26 (*Glossary of Legislation, Advice and Judgements*), the authors of this report argue that the legal rights of children and parents have effectively been eroded.

The authors have endeavoured to ensure that there are no factual inaccuracies in this report, and have produced it in good faith with the aim of highlighting problems in the admissions system that urgently need to be addressed in order to ensure the wellbeing and legal rights of a specific group of children. If made aware of any inaccuracies in their report, the authors will seek to immediately amend or delete as necessary.

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THE PROBLEM

Essentially, in the process of affording parents the *choice* of enrolling their 4-year-old children in school *prior to* compulsory school age, the primary education legislation that still says parents can wait until the term *after their child turns 5* has effectively been forsaken. Exacerbating this is the fact that admission authorities and systems have become so accustomed to operating within 12-month “*chronological cohorts*” (neither are legal terms in an admissions context) that education by batches has been allowed to supersede the best interests of an entire group of children who share the same characteristic. The DfE has recognised that a blanket policy of Year 1 entry for all summer born children who start school at compulsory school age is unlawful, and appears to be contacting admission authorities to ensure this is not happening. However, by insisting that admission authorities must make their decision about year group (Reception class versus Year 1) based on ‘*the circumstances of the case*’, and saying parents have no right of appeal if the decision is Year 1, the DfE may be falling short in its lead responsibility for implementing the United Nations Convention on the Rights of the Child (see p.20-24). It is simply **not** addressing the problem of inconsistency or ideology in **how** admission authorities decide on year group, or the fact that a parent’s wish and statutory responsibility to secure efficient full-time education suitable to their child’s age, ability and aptitude (i.e. 7 years of primary school starting in Reception class – the exact same decision made by most parents) is being denied on the dubious grounds that only in ‘exceptional circumstances’ can a 5 year-old enter Reception class.

To explain further:

- **The 2012 School Admissions Code** does not explicitly state that summer born children starting school can lawfully join an “**entry class to primary schools**” (i.e. Reception class) at compulsory school age, and so in July 2013 the DfE published new advice to make this clear. Except the advice, and subsequent communication from Ministers, have made the DfE’s position even *less* clear and has even contradicted primary legislation. In the past four months, parent campaigners, solicitors, the Office of the School Adjudicators and the charity Bliss have all called on the Government to issue *further* guidance or advice, or amend its Code, but it has refused. The DfE insists on supporting local decision-making that it *knows* is the absolute antithesis of parents’ wishes.
- **Compulsory school age** is the term following a child’s 5th birthday, but parents have the right to enrol their child earlier than this if they feel their child is ready. For summer born children (i.e. those born in April, May, June, July and August), this means **they can legally start school in one of two different academic years** – within the academic year beginning the September following their 4th birthday **OR** in the September following their 5th birthday.
- **Reception Class** is defined in the 2012 School Admissions Code (the Code) as “*An **entry class to primary schools** providing education suitable for children aged five and any children who are under or over five years old whom it is expedient to educate with pupils of that age*”, and as such, more than adequately provides access to Reception for summer born children at age 5, if this is their parents’ wish.

- **A Child's Best Interests.** European law dictates that *"In all actions relating to children, whether taken by public authorities or private institution, **the child's best interests must be a primary consideration**"*; this is a position reiterated by Coram Children's Legal Centre in 2012: *"it is stipulated in the statutory guidance 'Every Child Matters: Change for Children' that 'in accordance with the UN Convention on the Rights of the Child the best interests of the child will be a primary consideration'. It is now clearly settled law that the best interests of the child are relevant to all decisions and decision-making processes directly or indirectly affecting a child."* (more info on p.20)
- **Suitable and Equal Education.** The 1996 Education Act outlines the *"Duty of parents: "The parent of every child of compulsory school age shall cause him to receive **efficient full-time education suitable to his age, ability and aptitude,**"* and the 1990 Convention on the Rights of the Child reads, *"States Parties recognize **the right of the child to education,** and with a view to achieving this right progressively and **on the basis of equal opportunity,** they shall, in particular: (a) Make **primary education** compulsory and **available free to all;**"*. It also says, *"States Parties agree that the education of the child shall be directed to: (a) The **development of the child's** personality, talents and mental and physical abilities **to their fullest potential**"*. Evidently, six years of primary school is not equitable with seven years.
- **Parents' Wishes.** The 1996 Education Act reads, *"**Pupils to be educated in accordance with parents' wishes.** In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of [F1State and local education authorities] shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure."* The DfE has confirmed that an age 5 start in Reception class for summer born children is compatible with these, but maintains that it is ultimately for local authority powers to decide, regardless of the wishes of parents.
- **Relevant Age Group.** This is the area of admissions law that is arguably open to two interpretations, but either way, still affords summer born children access to Reception class at age 5 (as explained on p.9-10). It is *"the age group at which pupils are or will **normally be admitted** to the school e.g. reception or year 7"* (SSFA 1998). According to common practice, it is the norm today for children to be admitted to school at age 4, but according to the 2012 Code and primary legislation, it is also normal for a summer born child of compulsory school age to be admitted to Reception at age 5 (since it is an entry class to primary schools, providing education suitable for children age 5, and a summer born child reaches compulsory school age in the autumn term following their 5th birthday).

WHY THE PROBLEM EXISTS

Admission authorities (at schools and councils) tend to *only* refer to the 2012 Code to inform their own admission policy and practices, and because primary legislation as it relates to summer born children is **not explicitly outlined** in the Code, a large number of **unlawful** policies are in practice throughout England, often without the local admission authority even realising. In July 2013, following complaints from parents and the baby charity *Bliss*, the DfE sought to address the 2012 Code's limitations by publishing new advice, but since the advice itself is non-statutory, and because further misunderstanding and disagreement has now emerged about what the *advice* means, the situation in many cases is actually getting worse, and unnecessarily complicated (see examples on p.35-39). The DfE argues that admission authorities are misinterpreting the Code but the counter argument is that **the Code is not sufficiently clear**. Readers of this report can decide for themselves but the outcome is the same – the rights of children and their parents have effectively been eroded.

“You shouldn't have to hire a lawyer to navigate the school system”.

This is what the Rt Hon Michael Gove MP, Secretary of State for Education said on May 27, 2011 in the DfE's press release to launch a 12-week consultation of its draft new Code. Yet less than one year after the 2012 Code was published, parents of summer born children were already seeking to do exactly that.

- Following publication of the 2012 Code on its website (updated October 12 2012), the DfE advised that **“this guidance will be kept under review and updated as necessary”**. Given its reluctance to update the Code ‘as necessary’ for summer born children, it's apparent that the DfE has no intention of applying this promise in relation to either the problem of forced early entry to school, or of forced denial of a year of education at primary (and in some cases, secondary) school.
- Unlawful policies and practices are widespread. There is an almost universal assumption that unless there are ‘exceptional circumstances’, all summer born children *must* start school at age 4 or else lose one whole year of their primary school education – starting in Year 1, at age 5 – and risk losing a place in a preferred school altogether. The DfE says a policy of Year 1 for 5 year-olds is unlawful, but refuses to concede that greater clarity of the Code is necessary, possibly because the status quo has gone unchallenged for so long. In numerous cases, many parents are now more knowledgeable of primary legislation than department officials and admission authorities, and this has led to local David and Goliath style battles that are time-consuming, costly and stressful. Amending the Code would put a stop to this.
- There are two paragraphs in the 2012 Code relating to admissions that are most relevant here, but the first thing to note about each of them – given the Government's September 2013 assurances that it wants to *“empower”* parents (p.16) – is the precise lack of powers the Code bestows. Firstly,

parents of *all* children can only “**request**” deferral and part-time attendance prior to compulsory school age, which has led to cases of parents being **forced to enrol their child in school early** when their request was denied. Secondly, for parents of summer born children whose request for their child to enter Reception class at age 5 is denied (and Year 1 is decided on instead), the Code says there is **no right of appeal** – even though other parents with the same preference for a Reception class place at their preferred school, in the exact same admissions round, but with a child enrolling *earlier* than compulsory school age, *do* have a right of appeal. This is inequitable and unfair.

- “2.16 Admission of children **below** compulsory school age and deferred entry to school - Admission authorities must provide for the admission of all children in the September following their fourth birthday. The authority must make it clear in their arrangements that:
 - a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and
 - b) parents can request that their child takes up the place part-time until the child reaches compulsory school age. ”

Parents’ requests for these options are very often refused, sometimes because of funding (explained more fully on p.47-48 but in brief, schools receive money per child in situ when the school census is taken in October, with a ‘Reception uplift’ applied based on the October and January census count of the previous year; therefore, latecomers in the year (after January) will result in less money for schools); also, summer born children entering the primary school system at age 4 will usually use just half of their full 6-term EYE pre-school funding allowance, which saves money in the short term; and sometimes also because of concerns that there is so much literacy and numeracy now covered in the Reception class year that the child will fall behind their peers (the EYFS Profile is likely exacerbating this concern). Note that 2.16 above says nothing about children **of** or **at** compulsory school age, and since “*deferred entry*” is only applicable for the academic year applied for (which is entirely understandable), the term “*deferred*” is not relevant to summer born children applying for entry to Reception at age 5, commencing in the academic year when they have **reached** compulsory school age. Entry prior to September at age 5 would mean they are starting school *earlier* than they have to, which is not the wish of every parent. The report authors feel strongly that one separate extra clause in this section of the Code would have avoided confusion, conflict, detriment and extraneous processes. For example:

“Parents who wish their summer born (April 1st - 31st August inclusive) child to join Reception class at compulsory school age must submit an application for the relevant academic year. The application must be treated equitably with children starting school prior to compulsory school age, and the child can remain with that year group cohort for the remainder of their education.”

Without this kind of clarification, the 2012 Code has proved ambiguous and open to interpretation.

- “2.17 Admission of children outside their normal age group - Parents of gifted and talented children, or those who have experienced problems **or missed part of a year**, for example due to ill health, can seek places outside their normal age group. Admission authorities **must make decisions on the basis**

of the circumstances of each case, informing parents of their statutory right to appeal. This right does not apply if they are offered a place in another year group at the school."

This is the paragraph that the DfE insists is applicable to 5 year-old summer born children joining an entry class (Reception) to primary school that is providing education suitable for children aged 5. The report authors believe that the primary legislation definition of "*relevant age group*" includes children entering Reception class at **both age 4 and age 5**, and provides flexibility and the right to choose when a child starts school – i.e. early, or once they've reached compulsory school age. Nevertheless, in its July 2013 summer born explanatory advice, the DfE has left the decision about year group entry – with no right of appeal for parents – with local admission authorities; and despite the overwhelming majority of circumstances being *exactly* the same (i.e. summer born children seeking access to a full 7 years of primary education, starting at compulsory school age, who will otherwise end up missing a **whole year** of their education, and not just "*part*"), the DfE advice says admission authorities can decide based on "*the circumstances of the case*". So, in terms of progress, it made it clear that a policy of Year 1 entry for children starting school at 5 is unlawful, and the 2012 Code already explains that "*Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.*"

However, just two months after the July advice, further clarification was needed *again* (this time delivered verbally in Parliament) when it became clear that "*circumstances of the case*" was being interpreted as there needing to be '*exceptional circumstances*' for Reception class entry at age 5. We are now seeing special '**medical panels**' being set up by some admission authorities in England, which are actively and openly demanding '*documented evidence*' from educational and health specialists to prove that a child *needs* seven years of primary school education and not just six if they start school at compulsory school age. Furthermore, these panels will usually only make a decision on year group **after** parents have submitted their application, and in some cases **after** other children have been allocated their places, which is an appalling situation for parents to have to face.

These panels are determined to look for exceptional circumstances despite the DfE saying there is no such requirement, but when numerous parent campaigners have informed the Government of this impending problem in the 2014 applications and admissions round, Ministers and officials still maintain that it is up to local authorities to decide how they make their decisions.

Some parents of children born prematurely have found the new advice helpful, since it is a step in the right direction and they are more able to demonstrate '*exceptional circumstances*' in their child's development, but for parents of summer born children more generally, acceptance in Reception class at age 5 is simply denied. What this means in practice is that because the DfE is determined to merely kick the can further down the road, the entire admissions process for summer born children remains unpredictable, inconsistent and unfair. At *best*, the 2012 Code delivers a postcode lottery for the 2014 admission and continued education of summer born children and at worst, irreparable damage is being done to the development and education of too many children.

HOW THE PROBLEM CAME ABOUT

Essentially, over time, the rights of summer born children have been all but ignored or forgotten, and as consecutive governments' education departments focused on passing education law to allow more and more children to start school *early*, their School Admission Codes failed to always accurately reflect existing primary education legislation. The idea that virtually all children must start school at age 4 is so completely entrenched in our society that there is even widespread debate about *whether* there should be flexibility for summer born children's entry to school when in fact it *already exists* in law. Later in this report, a detailed *Admissions History* (p.51) provides more information on all of this, but this section contains some of the most recent influences.

- The 2009 Rose Review and the 2010 Code ensured that it became statutory for parents to be able to choose to enrol their children in school *earlier* than compulsory school age. This Code and the 2012 Code then sought to ensure that parents were afforded flexibility around *deferring* their child's entry to different times *within* the academic year without jeopardising their child's place in the school (e.g. so that children starting in the September could not be offered priority places ahead of children starting in January). However, a subtle yet critical shift in emphasis in both the 2009 and 2010 Codes meant that the rights of summer born children became less certain. In the definition of Reception class, both of these Codes cite "*section 142 of the SSFA 1998*", which actually reads: "*a class in which education is provided which is suitable to the requirements of **pupils aged five and any pupils under or over that age** whom it is expedient to educate with pupils of that age*". But the 2009 and 2010 Codes read: "*An entry class to primary schools for children who are **aged 5 during the school year** and for children who are **younger than 5** who it is expedient to educate with them.*"

The addition of "*during the school year*" coupled with the omission of "*over that age*" effectively removed access to Reception class for most summer born children starting school at compulsory school age (who would be age 5 at the start of the year and turning 6 during the school year), and fundamentally contradicted primary legislation.

- Culturally, increasing numbers of children in society were entering nurseries and pre-schools at ever younger ages; the previous (Labour) Government extended pre-school funding to 3 year-olds when before it was just for 4 year-olds, and the term "*Rising Fives*" was introduced to define all the children now starting school earlier than compulsory school age (and although originally it was coined to define children who were actually closer in age to 5 rather than 4, this was soon no longer the case and in fact many children were closer in age to 4 than 5). There were also likely funding incentives, through the nursery voucher scheme, which made local authorities keen to enrol more pupils in school at age 4 (see *Admissions History* on p.57-77).
- The term "*exceptional circumstances*" only appears in the 2012 Code in relation to infant class sizes, and in the 2009 and 2010 Codes it appears in the administrative context of admission numbers for each relevant age group. Therefore, as summer born children entering Reception class **at** compulsory school age became increasingly rare and considered '*outside their normal year group*', it

meant that authorities began requiring ‘evidence’ to support anything other than an age 4 start for these children within standard 12 month batches of ‘chronological cohorts’. Yet nowhere does it state in legislation that only in exceptional circumstances can 5 year-olds enter Reception class.

- The idea that all 4 year-olds should be in school, despite primary legislation to the contrary, is so pervasive in England that even communication from the Education Secretary Michael Gove (in a March 2013 letter to the MP of one of this report’s authors) contained an incorrect definition of compulsory school age: **“All children must start school by the time they reach their fifth birthday”**. In July 2013, Mr Gove wrote again to the MP, apologising for the error. “[She] is correct, that a child is of compulsory school age on a prescribed day. I am very sorry that my previous letter did not make this clear.”
- Inaccuracies that infer all children must start school at age 4 are very often unnoticed and/or uncorrected. For example, – remarkably and ironically – in its July 2013 advice on summer born admissions, the DfE included as an *“Associated Resource”* for authorities and parents the latest May 2013 report from the Institute for Fiscal Studies (IFS), *When You Are Born Matters: Evidence for England*. Page 70 of this report reads, *“In fact, **within the confines of the current education system – in which parents can defer their child’s entry to primary school until the term after they turn 5 (i.e. so that they join the same academic cohort a year later) but not delay it (i.e. hold them back a year so that they join the subsequent academic cohort)...**”*

When one of the authors of this report asked the IFS where it had sourced this information, the researchers replied, *“This information comes from the schools admissions code (2012), sections 2.16 and 2.17. You’re right that admissions authorities do have some flexibility, but we omitted this as the schools admissions code makes clear this is in exceptional circumstances.”* In fact, as stated previously, the term *“exceptional circumstances”* appears just once in the Code, in a separate section dealing with *“Infant class size”* (2.15), but this example makes clear how the term is being interpreted or misinterpreted, depending on one’s view of the Code’s clarity.

Nevertheless, if widespread **misinterpretation** of the 2012 Code is at fault (by admission authorities, the IFS and many others), as opposed to the Code itself, it must surely still be remiss of the DfE if it fails to clarify and correct any misinterpretations where it finds them, particularly if making use of documentation that contains such misinterpretations. How could this May 2013 IFS document, – which contains the exact **opposite information** being communicated in the DfE July advice within which it appears – have been deemed suitable for inclusion in a publication *“intended to... dispel some of the myths that appear to have arisen”*? It can only add to the existing confusion.

- The 2009 Government funded Rose Review highlighted the disadvantage faced by some summer born children who started later in the Reception class year (and who essentially missed part of their education), and so recommended, *“The preferred pattern of entry to reception classes should be the September immediately following a child’s fourth birthday.”*

Rose acknowledged that “some parents would like their children to enter reception class in the September after their fifth birthday rather than entering Year 1 [and that] Some respondents questioned whether reception classes are the most appropriate place for 4-year-old children at all”, and he assured readers, “It is important to be clear that **this is not a recommendation to lower the statutory school starting age** rather than give parents a greater choice, and to achieve a better match of provision to need in the Reception Year”. And yet the outcome has been exactly that – despite parents’ concerns and despite a 2010 warning from the Chief Schools Adjudicator Dr. Ian Craig, that, “Greater clarity is needed in the Code about parents’ rights relating to deferral of school places until a child is of statutory school age”. Perhaps prophetically, Dr. Craig also said, “**I think we need to be very careful that while we're making [the Code] more accessible we don't simplify it to such an extent where it becomes a useless document.**”

- It became widely accepted, in the 2009 Rose review and in subsequent IFS research, that because of greater positive benefits realised in summer born children who started school soon after their 4th birthday (usually September) than those who started school still at age 4 but later in the academic year, it must be the extra time in school that makes the difference – hence the “*preferred pattern of entry*” recommendation. Less consideration appears to have been given to the very real likelihood that many of the summer born children starting one year early may have been deemed more ‘*ready*’ for school by their parents (and therefore were always more likely to do well in school), while those starting later were deemed ‘*not ready*’, and might actually have benefited by waiting until compulsory school age and starting school in the next academic year – and not earlier still. What’s key here is that vital research and decision-making is taking place in a social milieu that for the most part **doesn’t even know that joining Reception class at age 5 is possible** (e.g. IFS, May 2013).

This report’s authors believe that the ‘*solution*’ of an even earlier start for children who are not ready for school will very likely exacerbate the problem for some summer born children, and this is precisely why information and genuine access to flexibility is essential and beneficial. Flexibility means that parents of ‘*more ready*’ children won’t feel held back (they can still start their children at age 4), parents of ‘*less ready*’ children and parents who simply don’t want to start their child at school prior to compulsory school age won’t feel pushed (they can decide on which academic year would be best), and it avoids shifting the problem wholesale on to the next youngest group of children (which is what has happened in Northern Ireland where July and August born children *all* must start school in the following academic year, and now it is parents of children born in May and June campaigning for flexibility).

- Definitions of who the Reception class in school is for, who the Early Years Foundation Stage Profile (EYFSP) is for, and even what constitutes a ‘*summer born*’ child, can differ between different DfE publications (see p.40-44 for examples), and since School Admission Codes present primary legislation in the Government’s own words, this has inevitably helped to exacerbate the confusion and misinterpretation related to summer born admissions (see *Admissions History* on p.57-77).

- A legal centre that provides free education legal information and advice (and which is advertised on websites including those of the DfE, the Office of the School Adjudicators and many local authorities) may give outstanding advice in other areas of admissions and appeals, but the advice given to one of the authors of this report appears to be unsound. The advice line operator advised that the reason summer born children have to start in Year 1 and not Reception class at compulsory school age is because *'Year 1 is compulsory, Reception is not'*. The operator also advised her to apply for a school place *'as normal'* and that she could start her child in Reception class on the last day of term before the summer holidays and then start him full time in Year 1. The report authors are aware of other parents that have received similar legal advice, and it's fair to say that at almost every turn, there is pressure on parents to enrol their child early, at age 4, and communication that says otherwise, at age 5, Year 1 will be the only option.

WHAT NEEDS TO BE DONE

The Government needs to act urgently and publicly, and **questions need to be answered**. Changing the 2012 Code so soon after publication may be unpalatable but the Government needs to admit there is evidently a *serious* problem, stop communicating mixed messages and inconsistent information, improve its communication with and support for parents of *all* summer born children, and make year and time of entry into Reception class the default decision of *parents*. The Department for Education is making some headway with contacting local admission authorities that have unlawful policies, but evidently, this is not adequate enough.

- There is irrefutable evidence that **some** summer born children are adversely affected by an early school start – it's not always just being youngest in their year – and since evidence (including the Government's own 2009 Rose Review) shows that the situation can be worse for some summer born children who miss even *part* of their Reception year, why is the onus now on *parents* to prove that a Reception class start (and not Year 1) is in the best interests of their compulsory age children – with no right of appeal?
- Surely unless a summer born child is exceptionally emotionally and socially mature, talented or gifted, it would be very unusual for them to be able to afford missing the first "*critical*" year (a DfE description) of their primary school education?
- Where is the evidence that a Year 1 (far more academic) start, missing Reception class (with its more play-based curriculum but still providing a foundation in literacy and numeracy) is in the best interests of summer born children who are starting school at compulsory school age?
- Why are decisions being left at a local level (where we know the focus is on administrative 'chronological cohorts' and where many unlawful policies and practices are in place) when primary legislation provides the general principle that pupils are to be educated in accordance with the wishes of their parents, and many parents are adamant that full-time in Year 1 at compulsory school age is **neither** efficient **nor** suitable to their individual summer born child's age, ability and aptitude?
- Why, when the DfE *knows* its 2012 Code is causing such problems in this area, does it persist in quoting from it in the vain hope that the problem *might* improve, or go away – instead of highlighting and quoting relevant primary education legislation to local admission authorities?
- The deadline for primary school applications is January 15, 2014, and aside from ensuring that summer born children have fair and equal access to a full education, the DfE might consider the psychological and administrative turmoil and uncertainty that ensues when parents of 2010 summer born children apply for places in September 2014 that they don't even want, simply because they're too frightened that the situation will not be resolved by September 2015 and they'll lose any chance of a place in their preferred school altogether – or they have been persuaded by their local admission authorities to apply early, despite making it clear that this is against their wishes. If the situation *is* finally resolved, their applications will have taken places away from parents who truly *want* their children to start school in the 2014 academic year. The DfE also needs to recognize that

even parents who *want* to enrol their child in Reception at age 4, but later in the year, are often denied this option and feel powerless to fight.

- On September 4, 2013, in response to Early Day Motion 213 tabled by Annette Brooke MP, the Parliamentary Under Secretary for Education Elizabeth Truss MP stood up in Parliament and outlined the importance of parental choice and empowering them to gain lawful access to Reception class for their summer born children. **She even conceded that the 2012 Code “was not necessarily clear enough”** and challenged the removal of the right of appeal in section 2.17 of the Code by saying the Government needs to ensure that parents **“have the complaints and appeals procedures at their disposal”**. Her assurances (below) provided fleeting optimism for many parents but nevertheless, they continue to bear no resemblance to the experience of most (and indeed some admission authorities have already dismissed her remarks as non-statutory, and disagree entirely with her premise that the July 2013 makes what she said “clear” at all). Worse than that, the DfE itself is still writing to parents saying, ‘*It remains the case that it is for the school’s admission authority to decide whether a summer born child can begin school in Reception class or year 1*’. This palpable disparity in communication from DfE Ministers is shockingly unacceptable.

Ms Truss:

“What we want to do is to empower parents to be more demanding about how their child’s level of development is reflected in whether they join reception or year 1 when they enter school after reaching the compulsory school age.

...

*The way to do things is to empower parents and **ensure, first, that they have the complaints and appeals procedures at their disposal** and, secondly, that the DfE is following up on those procedures. We have a working group on admissions, which is monitoring this issue. As a Department, we will also be monitoring any complaints made by parents,... and following up to ensure that our guidance is being adhered to.*

...

*The point about flexibility is important, because all children are different. Some children may benefit from entering year 1 as soon as they reach the compulsory school age, while others would benefit from entering reception. **It should be the parents who are the primary decision-makers when it comes to deciding which route is most appropriate for their child and which environment will enable their child to thrive.***

...

***We are absolutely clear that parents should be able to say to a school, “We want our child, who is aged five, to enter reception”, if they feel that that is in the best interests of their child.** That is what we are elucidating in the new guidance that we issued this summer and that is what we will be following up on with local authorities and schools.*

...

*One of the reasons why we issued the new guidance is that **we felt that earlier guidance was misunderstood and that it was not necessarily clear enough.** I also agree with my hon. Friend’s comment earlier about the “floodgates”. Like her, we do not think that the new guidance will open the “floodgates”; we think that **it is about schools being responsive to parental needs and that there are not a massive number of complications in doing that. We want schools to be responsive to parental needs.***

...

*[Re] the non-statutory advice that we issued on 29 July. We make it absolutely clear that there is no statutory barrier to children being educated outside of their normal year group and that **it is unlawful for an admissions***

authority to have a blanket policy that children are never admitted outside of their normal age group. We make that very clear in the guidance.

...

We have been clear with local authorities about where their responsibilities lie, and about the fact that we want to see them being flexible and giving the parents the choice for their five-year-old child of joining reception or year 1. Having too much central guidance the other way would be wrong. What we need to do is to ensure that local authorities are absolutely aware of their responsibilities."

- There is inconsistent information coming from the DfE, with various web pages and documents contradicting each other and rendering the information they are designed to impart unclear and confusing (see p.40-44). It also appears that various writers may have produced information in the context of their own working area only, and without taking into account material already published or what other colleagues may be working on. The DfE needs to execute methodical 'housekeeping' of the information it has published to date in order to ensure consistency and clarity.
- The DfE needs to make primary legislation clear to *everyone* involved with the admissions process, including parents, head teachers, governors and local authorities. Summer born children starting school in the September following their 5th birthday sit firmly within the legal meanings of 'compulsory school age', 'reception class' and 'relevant age group', as much as any other pupil starting school. If the DfE truly believes this should be allowed to happen, then the DfE is the party responsible for ensuring it can.
- Applications for Reception class at compulsory school age need to be considered equitably, as part of the normal admissions round for entry into primary school. Admissions authorities are currently basing their decision on whether to admit a child of 'compulsory school age' into 'Reception class' or Year 1 based on the child's date of birth, or whether they meet a prescribed set of exceptional circumstances. This is despite the legal meanings of these definitions, and without primary consideration of what is in the child's best interests or what a parent wishes.
- With immediate effect, admission authorities need to ensure that their policies **and practices** are lawful, in the knowledge that primary legislation supersedes the statutory 2012 Code. The DfE's special *Working Group on Admissions* should make it a priority to check the admission arrangements of all admission authorities and ensure any necessary changes are made to those with unlawful policies and practices.
- The DfE needs to make the legal centre it advertises aware of the primary legislation so that it can arrange staff training as necessary in order that they can provide sound legal advice to parents on this particular matter.
- Admission authorities need to stop perpetuating the myth that school admissions legislation sits strictly inside a 12 month timeframe when the full birthdate window for entry to Reception class is actually 17 (e.g. Parents are currently asked, "*Is your child starting school in September 2014? If your child was born between 1 September 2009 and 31 August 2010 you will need to apply for a school*

place". This would read more accurately, "If your child was born between 1 April 2009 and 31 August 2010, and you have not already done so, you will need to apply for a school place", or similar).

- The focus of discussions and debate by admission authorities needs to shift away from why a parent does not want their summer born child to join Reception class at age 4, to which year group is most appropriate for them when starting school at age 5 (if this is the parent's wish). Given this quote taken from the 2009 Rose Review, it is shocking that prevailing policies and practices are forcing a Year 1 entry when the child reaches compulsory school age, and that the DfE has done so little to stop it: "**The move from the Reception Year to Year 1 often brings a shift in pedagogical style, from the largely play-based philosophy of the EYFS to the more subject-oriented teaching associated with the National Curriculum. Teachers report that those most at risk from this shift are summer-born children, children who are described as 'less able', those with SEN and those for whom English is a second language.**"
- The DfE needs to make it absolutely clear that children will have their EYFS Profile completed at the end of Reception class (not based on age), the Phonics Test in Year 1 (not based on age), SATS on the completion of the relevant programme of study (not based on age) and that summer born children are entitled to a full 7 years of primary and a full 5 years of secondary school (entering in year 7), without losing a year of schooling at this stage in their education. At present, different information provided by the DfE contains contradictory definitions of who the EYFSP is for, and when it should happen (see p.42-44).

GLOSSARY OF LEGISLATION, ADVICE AND JUDGEMENTS

This chapter of the report is the most important, as it contains information about key legislation that relates to school admissions, and in particular, the admission of summer born children entering school at compulsory school age. The authors have highlighted some **key phrases** below, and believe that unless the Government amends its 2012 Code, it will only be a matter of time before a judicial precedent is set.

- **Compulsory School Age**

Education Act 1996 (Part 1, Chapter1, sub-section 8)

(2) A person begins to be of compulsory school age –

- (a) when he attains the age of five, if he attains that age on a prescribed day, and
- (b) otherwise at the beginning of the prescribed day next following that age.

The Education (Start of Compulsory School Age) Order 1998

1998 No. 1607 Article 2 ‘prescribed day’

2. For the purposes of section 8(2) of the Education Act 1998-

- (a) 31st August and 31st December shall be prescribed days for 1998 and successive years; and
- (b) 31st March shall be a prescribed day for 1999 and successive years.

- **Reception Class**

The School Standards and Framework Act 1998 (Section 142)

“reception class” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate with pupils of that age

School Admissions Code 2012

Reception Class - Defined by Section 142 of the SSFA 1998.

An **entry class to primary schools** providing education suitable **for children aged five** and any children who are under or over five years old whom it is expedient to educate with pupils of that age.

- **Relevant Age Group**

School Standards and Framework Act 1998 (Section 142)

“relevant age group”, in relation to a school, means an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school;

- **Parents’ Wishes**

Education Act 1996 (Section 9)

Pupils to be educated in accordance with parents’ wishes.

In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of [F1State and local education authorities] shall have regard to the **general principle that pupils are to be educated in accordance with the wishes of their parents**, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

Education Act 1996 (c. 56 Part I Chapter I)

Education in accordance with parental wishes.

9 Pupils to be educated in accordance with parents' wishes.

In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of [F1State and local education authorities] shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

November 4, 2013 ADA2555: Pencombe CE Primary School

Adjudicator: Mrs. Carol Parsons

Paragraph 30: **It is for parents to make a decision about what is in the best interests of their child** rather than for the school to make a decision on their behalf.

- **Efficient and Suitable Education**

Education Act 1996:

Part I General Chapter I The Statutory System of Education (Compulsory education)

7. Duty of parents to secure education of children of compulsory school age.

The parent of every child of compulsory school age shall cause him to receive efficient full-time education **suitable—**
to his age, ability and aptitude,

- **Parents' Responsibility**

Parental Responsibility as defined by the Children Act 1989 (since amended):

*"means **all the rights, duties, powers, responsibilities and authority** which by law a parent of a child has in relation to the child and his property."*

- **Best Interests**

European Union Charter of Fundamental Rights (Article 24, Clause 2)

In all actions relating to children, whether taken by public authorities or private institution, **the child's best interests must be a primary consideration.**

UN Convention on the Rights of the Child (PART I Article 3)

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

UN Convention on the Rights of the Child (Part I Article 29)

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities **to their fullest potential;**

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

UN Convention on the Rights of the Child (Part II Article 42)

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

UN Convention on the Rights of the Child - CRC/C/GC/14

Committee on the Rights of the Children General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*

*Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Convention on the Rights of the Child (art. 3, para. 1)

The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.² The Committee has already pointed out that *“an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.”* It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the *“child’s best interests”* and no right could be compromised by a negative interpretation of the child’s best interests.

²The Committee expects States to interpret development as a *“holistic concept, embracing **the child’s physical, mental, spiritual, moral, psychological and social development**”* (general comment No. 5, para. 12).

5. The full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.

The Committee underlines that the child's best interests is a threefold concept:

(a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) A fundamental, interpretative legal principle: **If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen.**

The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: **Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account.** In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child’s

best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

III. Nature and scope of the obligations of States parties

Each State party must respect and implement the right of the child to have his or her best interests assessed and taken as a primary consideration, and is under the obligation to take all necessary, deliberate and concrete measures for the full implementation of this right.

Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties:

(a) The **obligation to ensure that the child's best interests are *appropriately integrated and consistently applied in every action taken by a public institution***, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;

(b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. **This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.**

(c) The obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.

To ensure compliance, States parties should undertake a number of implementation measures in accordance with articles 4, 42 and 44, paragraph 6, of the Convention, and ensure that the best interests of the child are a primary consideration in all actions, including:

(a) **Reviewing and, where necessary, amending domestic legislation** and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, **rules governing the operation of private or public institutions providing services or impacting on children**, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure;

(b) **Upholding the child's best interests in the coordination and implementation of policies at the national, regional and local levels;**

(c) Establishing mechanisms and procedures for complaints, remedy or redress in order to fully realize the right of the child to have his or her best interests appropriately integrated and consistently applied in all implementation measures, administrative and judicial proceedings relevant to and with an impact on him or her;

(d) Upholding the child's best interests in the allocation of national resources for programmes and measures aimed at implementing children's rights, and in activities receiving international assistance or development aid;

(e) When establishing, monitoring and evaluating data collection, **ensure that the child's best interests are explicitly spelled out** and, where required, support research on children's rights issues;

(f) Providing information and training on article 3, paragraph 1, and its application in practice to all those making decisions that directly or indirectly impact on children, including professionals and other people working for and with children;

(g) Providing appropriate information to children in a language they can understand, and to their families and caregivers, so that they understand the scope of the right protected under article 3, paragraph 1, as well as creating the necessary conditions for children to express their point of view and ensuring that their opinions are given due weight;

(h) Combating all negative attitudes and perceptions which impede the full realization of the right of the child to have his or her best interests assessed and taken as a primary consideration, through communication

programmes involving mass media and social networks as well as children, in order to have children recognized as rights holders.

In giving full effect to the child's best interests, the following parameters should be borne in mind:

- (a) The universal, indivisible, interdependent and interrelated nature of children's rights;
- (b) Recognition of children as right holders;
- (c) The global nature and reach of the Convention;
- (d) **The obligation of States parties to respect, protect and fulfill all the rights in the Convention;**
- (e) **Short-, medium- and long-term effects of actions related to the development of the child over time.**

IV. Legal analysis and links with the general principles of the Convention

A. Legal analysis of article 3, paragraph 1

1. *"In all actions concerning children"*

(a) *"in all actions"*

Article 3, paragraph 1 seeks to ensure that the right is guaranteed in all decisions and actions concerning children. This means that every action relating to a child or children has to take into account their best interests as a primary consideration. The word "action" does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures.

4. *"Shall be a primary consideration"*

However, since article 3, paragraph 1, covers a wide range of situations, the Committee recognizes the need for a degree of flexibility in its application. The best interests of the child – once assessed and determined – might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that **the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.**

V. Implementation: assessing and determining the child's best interests

(g) **The child's right to education**

It is in the best interests of the child to have access to quality education, **including early childhood education**, non-formal or informal education and related activities, free of charge. All decisions on measures and actions concerning a specific child or a group of children must respect the best interests of the child or children, with regard to education. In order to promote education, or better quality education, for more children, States parties need to have well-trained teachers and other professionals working in different education-related settings, as well as a child-friendly environment and appropriate teaching and learning methods, taking into consideration that education is not only an investment in the future, but also an opportunity for joyful activities, respect, participation and fulfilment of ambitions. **Responding to this requirement and enhancing children's responsibilities to overcome the limitations of their vulnerability of any kind, will be in their best interests.**

- **Human Rights**

Article 2 Protocol 1 Right to education - European Convention on Human Rights

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall **respect the right of parents to ensure such education and teaching in conformity with their** own religious and **philosophical convictions.**

Article 14 Prohibition of discrimination – European Convention on Human Rights

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, **association with a national minority**, property, **birth** or other status.

Article 13 Right to an effective remedy – European Convention on Human Rights

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

- **Admission Arrangements**

School Admissions Code February 1, 2012

Footnote 4 Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to **any device or means used** to determine whether a school place is to be offered.

1.1 Admission authorities are responsible for admissions and must act in accordance with this Code, the School Admission Appeals Code, **other laws relating to admissions¹⁰, and relevant human rights and equalities legislation.**

[¹⁰ The main provisions relating to admissions are in Chapter 1 of Part 3 of the SSFA 1998.]

1.8 Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.

School Admissions Appeals Code 2012

2.5 When a local authority or an admission authority informs a parent of a decision to refuse their child a place at a school for which they have applied, it must include the reason why admission was refused; information about the right to appeal; the deadline for lodging an appeal and the contact details for making an appeal. Parents must be informed that, if they wish to appeal, they have to set out their grounds for appeal in writing. **Admission authorities must not limit the grounds on which an appeal can be made.**

- Regarding "*a decision to refuse their child a place at a school for which they have applied*"; put simply, parents of summer born children are applying for a Reception place at a school in the same way as anyone else. It is unclear why they should lose their right of appeal simply because they did not want to apply for a Reception (an entry class to school) place *one year early*. Ironically, the clause above says "*Admission authorities must not limit the grounds on which an appeal can be made*" and yet this is precisely what the Code itself does in section 2.17.

- **Entry to Primary School**

School Admissions Code February 2012

1.9 It is for admission authorities to formulate their admission arrangements, but they must not:

- a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements;...
- m) interview children or parents

2.16 Admission of children below compulsory school age and deferred entry to school - Admission authorities must provide for the admission of all children in the September following their fourth birthday. The authority must make it clear in their arrangements that:

- a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and
- b) parents can request that their child takes up the place part-time until the child reaches compulsory school age.

2.17 Admission of children outside their normal age group - Parents of gifted and talented children, or those who have experienced problems or missed part of a year, for example due to ill health, can seek places outside their normal age group. Admission authorities must make decisions on the basis of the circumstances of each case, informing parents of their statutory right to appeal. This right does not apply if they are offered a place in another year group at the school.

Office of the School Adjudicator's Chief Adjudicator

In her 2011-2012 annual report, Dr Elizabeth Passmore OBE noted: *"I have considered whether I can make any recommendations, based on the evidence available to me, this year about what further steps might be considered. At this time I have concluded that it is too early to draw any firm conclusions about the impact of the new Code on strengthening fair access overall. The Code is certainly a more concise document and there is no excuse for any admission authority not reading it and complying with its requirements. Some of our findings about the objections referred to the OSA clearly indicate that either the admission authority had not read the Code and had inadvertently failed to comply while others had decided to avoid complying."*

Considering the number of objections the OSA has now received regarding admissions arrangements containing unlawful policies and a failure to make clear the flexibilities allowed in law, the authors would welcome the Chief Adjudicator making recommendations to the DfE to ensure that admissions authorities comply with all relevant legislation.

December 3, 2013 ADA2560: Somers Park School

Adjudicator: Ms. Shan Scott

Paragraph 51: The school has already amended the classes section of its website arrangements to state that "All children in England start school in the academic year following their fourth birthday". Unfortunately, this is still not an accurate description of the legal position. A child who is five in the summer term does not have to start school until the following September. This is not the academic year following that child's fourth birthday, it is actually the academic year following that child's fifth birthday. There is also a further inaccuracy in the revised material on the website as it stands at the time of writing. The website now states that "the deadline for applications is the 15th January of the academic year in which a child will start school". This is not correct. Academic years run from September to August* and applications for places are made in the academic year which precedes the academic year for which a place is sought. The arrangements do not accurately describe the legal position and could be misleading. They are accordingly not clear and do not conform with the Code. The Code requires the school to amend its arrangements as quickly as possible.

- *the definition of academic year is "1st August and ending with the next 31st July"; the Adjudicator is likely referring to 'school year' here.

Advice on the Admission of Summer Born Children July 29, 2013

Advice for local authorities, school admission authorities and parents of summer born children; Key points:

- school admission authorities are required to provide for the admission of all children in the September following their fourth birthday, but flexibilities exist for children whose parents do not feel they are ready to begin school at this point
- school admission authorities are responsible for making the decision on which year group a child should be admitted to, but are required to make a decision based on the circumstances of the case
- there is no statutory barrier to children being admitted outside their normal year group

Available at: <http://www.education.gov.uk/f00227046/advice-on-the-admission-of-summer-born-children>

DfE Myths and Facts

From time to time the DfE produces a helpful 'Myths and Facts' publication which seeks to address "some common misconceptions about the activities schools are required to undertake." The summer born school admission controversy appears to be one of the biggest self-perpetuating myths in education legislation, but has been addressed just once.

September 2013 Edition -No mention of summer born issues

April 2013 Edition – No mention of summer born issues

January 2013 Edition – Inclusion of summer born issues

October 2012 Edition – No mention of summer born issues

January 2013: "**NEW Myth:** Where the parent of a summer born child wishes to defer their entry to school until they reach compulsory school age, they must be admitted to Year 1 rather than Reception.

Fact: Schools must provide for the admission of all children in the September following their fourth birthday, but parents may defer their entry until the point at which they reach compulsory age – the start of the term following their fifth birthday. This means that summer born children reach compulsory school age a full school year after the point at which they could first be admitted. However, there is no requirement as to the year group they should be admitted to. The headteacher and admission authority can decide whether to admit them to Reception or Year 1 depending on the circumstances of the case."

In September 2013, the DfE added this to the 'Need to know - information for schools' page of its website:

"NEW Start of term, September 2013 - Pupils

Publication of non-statutory advice about school start dates for children born in the summer. It should be read alongside the statutory School Admissions Code 2012."

- **Intervention Powers of the Secretary of State**

Education Act 1996 Section 496

Power to prevent unreasonable exercise of functions

(1) If the Secretary of State is satisfied (either on a complaint by any person or otherwise) that a body to which this section applies have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act, he may give such directions as to the exercise of the power or the performance of the duty as appear to him to be expedient (and may do so despite any enactment which makes the exercise of the power or the performance of the duty contingent upon the opinion of the body).

(2) The bodies to which this section applies are—

(a) any local education authority, [F1and]

[F2(b)the governing body of any community, foundation or voluntary school or any community or foundation special school.]

Education Act 1996 Section 497

General default powers

(1)If the Secretary of State is satisfied (**either on a complaint by any person interested or otherwise**) that a body to which this section applies have failed to discharge **any duty imposed on them by or for the purposes of this Act**, he may make an order—

(a)declaring the body to be in default in respect of that duty, and

(b)giving such directions for the purpose of enforcing the performance of the duty as appear to him to be expedient.

(2)The bodies to which this section applies are—

(a)any local education authority, [F1and]

[F2(b)the governing body of any community, foundation or voluntary school or any community or foundation special school.]

(3)Any directions given under subsection (1)(b) shall be enforceable, on an application made on behalf of the Secretary of State, by an order of mandamus.

ADMISSION AUTHORITY POLICIES AND PRACTICES

In fairness, many admission authorities (notwithstanding the fact that they should be fully conversant with all relevant legislation) may not even be aware that the DfE has said their policies are unlawful – such is the confusion – and the reluctance of the Government to make changes to the statutory Admissions Code itself does little to help.

Correspondence from the DfE to parents confirms the Government's view that there does not need to be any exceptional reason or special need in order for a summer born child to be allowed entry into Reception class at age 5, and quotes in the media from DfE spokespersons say that there *is* flexibility for parents of summer born children to request their child enters Reception class rather than Year 1. However, it remains unclear why this was not all specifically stated in the July 2013 advice, or indeed in the 2012 Code, and since it wasn't, most admission authorities are learning about it as and when they receive requests from parents of summer born children – to which the vast majority respond with the answer, “no” – unless exceptional reasons can be fully demonstrated with statements of support from health and education professionals.

UNLAWFUL and FLAWED ADMISSION ARRANGEMENTS (as per DfE July 2013 advice)

One of the report authors emailed a letter to the Office of the Schools Adjudicator on October 16, 2013 (see Appendix B), which drew its attention to the summer born issue and to a number of admissions authorities that have either omitted the flexibilities allowed in law from their admissions arrangements completely, and do not fully comply with all legislation, or appear to be unlawful (i.e. prescribing blanket policies of a Year 1 start for children entering school at compulsory school age).

In some cases, it can be very difficult to locate an authority's admissions arrangements and any associated policies, and very often all the relevant information cannot be found in one place. When this is the case, it makes it particularly difficult for parents to find a full set of information that is clear and easy to understand, and object to, if necessary. The report authors feel strongly that given the DfE's knowledge of widespread unlawful policies, it should, at the very least, have carried out spot checks throughout 2013 and contacted any authority that it found in breach of the law, or indeed the spirit of the law. This responsibility has instead fallen to parent campaigners, which is wholly inadequate. Please note that the extracts below were accessed between November 30 and December 4, 2013.

- **Bracknell Forest Council**

All parents will be offered a full time place for their child to start school in the September following their fourth birthday. Parents can request that the date their child is admitted to the school is deferred until later in the academic year or until the child's statutory school age. If this delayed date is September 2014 (for summer born children who reach statutory school age at this time), their child's entry will be as a year 1 child and a new application must be made. Parents can request that their child takes up a part time place until their child reaches statutory school age. For an explanation of statutory school age see General Information below.” [and] Bracknell Forest Council (2013). Coordinated Scheme for Admission to Primary, Infant and Junior Schools, incorporating admission policies for community and voluntary controlled schools For entry to schools in 2014-2015 [Online]. Available at: <http://www.bracknell-forest.gov.uk/home> (Accessed: 30 November 2013)*

If your child's birthday falls on or between 1 April and 31 August they will become of statutory school age on the 1 September, which is defined as the start of the autumn term. **If you choose for your child not to start until their statutory age, you would be required to reapply in June 2015 using the In Year process.** The In Year process is available from the website: www.bracknell-forest.gov.uk/changingschoolsmidyear

For these children, **starting school in a Reception class following a child's 5th birthday is only possible in exceptional circumstances** and only when it can clearly be seen to be in the child's best interest. Parents wishing to request this must speak to The School Admissions Team as soon as possible. The admissions authorities' decision is final.

Bracknell Forest Council (2013). *A Parent's Guide to Primary School Admissions in Bracknell Forest for children starting at a primary or an infant school in the school year starting September 1, 2014 and those children applying for a junior school place in year 3 starting in September 2014.* [Online]. Available at: <http://www.bracknell-forest.gov.uk/home> (Accessed: 30 November 2013)

- **Brighton and Hove City Council**

"If your child's fifth birthday falls between 1 April and 31 August 2015 and you choose not to send your child to school until the September following their fifth birthday, your child will join a Year 1 class rather than a Reception class."

Brighton and Hove City Council (2013). *When should my child start school?* Available at: <http://www.brighton-hove.gov.uk/content/children-and-education/primary-admissions-booklet/when-should-my-child-start-school> (Accessed: 30 November 2013)

- **Buckinghamshire County Council**

"Once a child is allocated a reception place under the scheme the school will offer a full time place in September 2014. Parents can choose whether to defer this offer within the constraint at (4) below, or to accept the offer on a part time basis as they wish. This deferment can be up to the point at which the child is legally required to start school (i.e. the start of the term after the child's fifth birthday) and cannot be beyond the end of the normal academic year of entry for the child (i.e. the latest any child could start is during the summer term of reception/foundation 2) otherwise they must re-apply for admission to Year 1."

Buckinghamshire County Council (2003). *Appendix 2 The Buckinghamshire admissions policy for community and voluntary controlled primary schools for September 2014* [Online]. Available at: <http://democracy.buckscc.gov.uk/ieDecisionDetails.aspx?Id=3119> (Accessed: 30 November 2013)

- **Buckinghamshire - The Aylesbury Vale Academy**

"Parents of children younger than five may request that their child is not admitted until later in the school year 2014/15 (no later than the term [using three term year] after the child's fifth birthday, when s/he reaches compulsory school age). The school will hold any deferred place for the child, although, in the majority of cases, we find that children benefit from starting at the beginning of the school year, rather than part way through it. For children whose fifth birthday falls between 1 April 2015 and 31 August 2015 parents cannot defer entry until September 2015 because that would mean admission to a different school year. If the child has not been admitted to the Reception Year in school year 2014/2015, a separate application should be made in the second half of the summer term [using three term year] 2015 for a Year 1 place in September 2015. In almost all cases, the Year 1 group will have no available places as it will have 60 children transferring from the 2014/2015 Reception Year." [and]

"Admission outside normal age group – Requests from parents for places outside a normal age group will be considered carefully e.g. for those who have missed education due to ill health. Each case will be considered on its own merits and circumstances. However, such admissions will not normally be agreed without a consensus that to do so would be in the pupil's interests. The governors will ask relevant professionals for their opinion on the case. Those refused places outside the normal age group will be informed of their statutory right to appeal."

- **Cambridgeshire County Council**

*“Children are of compulsory school age from the term following their 5th birthday. **If your child turns 5 in the summer term, and you choose not to send your child to a Reception class, then the child would be placed straight into Year 1 the following September - they would miss the Reception year.**”*

Cambridgeshire County Council (2013). *Can my child start school a year late or early?* Available at:

http://www.cambridgeshire.gov.uk/childrenandfamilies/education/primary/apply-primary/faqs.htm#a_2 (Accessed: 30 Nov 2013)

- **Dorset County Council**

“6.2 Back Yearing and Delayed Transfer

***There are instances when a child’s overall best interests are served by delaying admission** or remaining in the existing year. The social and educational implications of this must be taken into account. Such **arrangements will be considered only if agreed** or recommended by the child’s Headteacher and/or **any other professional involved**. Any decision will also be in line with the **LA Back Yearing Policy through the SEN team** and with the parent’s agreement.” [and]*

Dorset County Council (2013). *Commencing 2014 Admission Arrangements for Community and Voluntary Controlled Schools in Dorset* [Online]. Available at: <http://www.dorsetforyou.com/> (Accessed: 03 December 2013)

“Delaying a child’s entry to school:

*Your child’s school **start date can be delayed (known as deferred entry) until, at the latest, the term after their 5th birthday.***

- *This means that your child (depending on their birth date) would join either partway through the Reception Year or at the beginning of Year 1, missing part or all of the Foundation curriculum. **Deferred entry does not allow your child to enter the Reception class the following year.** Please contact the school directly to discuss this option, as your child’s start date must be agreed with the Headteacher.*
- *The vast majority of children start school full time in September, as it is beneficial for all pupils to undergo the planned induction process and establish friendships within the group.*
- ***Children born in the summer term who do not take up their place by the end of the Reception year will need to make a new application for a school place and will start in Year 1. There is no guarantee that the new offer would be the same as the original offer.**” [and]*

“Back or forward yearing:

This is when a child is educated in a year group outside of their normal age group, with children who are either a year younger or a year older than themselves.

- *There are long term issues for the pupil and school that arise from the decision to back or forward year a pupil. Dorset’s policy states that children should, wherever possible, be educated within their normal age group.*
- *If you believe your child would benefit from being educated outside of their normal age group, please approach the Headteacher of their current school to discuss the options available.*
- *If your child has not yet started school you should apply for a school place to ensure that you meet the closing date and approach the Headteacher of the school you are considering for advice.*
- *If you are moving to the area and your child has already been moved back or forward a year, please state this clearly on your application form. We will require confirmation of this from your child’s current school.*
- *Further information is available on our website: www.dorsetforyou.com/school-admissions/out-of-normal-year-group-policy”*

Dorset County Council (2013). *Admissions to schools A guide for parents and carers*. [Online] Available at: <http://www.dorsetforyou.com/> (Accessed: 03 December 2013)

Dorset County Councils Internal Policy:

“7. Deferred and Delayed Entry to the reception class

*Every child must legally start their education the term after their fifth birthday. However a September admission date is expected to be maintained for the majority of four year old children in Dorset. A parent may wish to delay application until after the fifth birthday or, having applied for a place in September, wish to defer the entry until later in that academic year. Neither action will result in the pupil being placed outside his or her normal age group and is therefore outside the remit of this policy. **With both deferred and delayed entry the pupil is placed in the appropriate age group.***

*7.1 Where parents/carers consider a **deferred entry** will be of benefit to the child, the parents/carers must contact their preferred school for further information and agree a date for entry to school for the child. The date of entry must not be beyond the end of the academic year (Foundation year). If the parents/carers do not take up the place at the agreed time, the place will be considered vacant and offered to another applicant. This applies to all schools.”*

- Where a parent wishes to defer entry, paragraph 4.11 of the School Admission Appeals Code 2012 states, **“In such circumstances the school is required to hold place for that child.”** There are no conditions attached to deferral, though it would appear that Dorset is indeed applying conditions to deferral requests.

“7.2 Parents/carers opting for deferred entry need to be aware of the possible implications. The child will miss part of the Foundation Stage curriculum and also the period of induction that the pupils starting in September will receive.

*7.3 **Delayed Entry** can only apply to children who have their fifth birthday in the summer term and this is where the child starts school a full year later than his or her peer group. **The child starts school later but joins the appropriate age group. The child will therefore start school in a Year 1 class rather than the Foundation Stage class.***

*7.4 There are significant implications for parents to consider. **The child will miss out on the induction period and, of course, the Foundation Stage curriculum.** In addition, parents will be seeking places at their preferred school in an already existing year group and **places may not be available.***

7.5 Parents/carers should be aware that, if a Head teacher recommends that a child who is about to enter reception waits for a year before starting school so that he or she is expected to enter the reception class the following year, then the parent/carer would need to apply for a place again a year later because a place cannot legally be retained for them. This could mean that the original school of choice did not have a place for the child, who could be placed at a different school where the Head teacher may not recommend placement outside chronological year.”

- The above clauses in this policy are stating that if a parent does not start their summer born child in Reception class at age 4, they will miss the foundation year, they will miss any form of induction and they will likely miss out on their preferred school. This implies therefore that a school start at age 4 is a condition of securing a place in a preferred school.
- This particular policy was published in 2008; it wasn't updated to reflect subsequent School Admissions Codes until 2012, when a new section was inserted:

“9. Request /Recommendation for pupil to be placed outside his or her normal age group

Parents are requested to discuss this option with the school prior to completing the attached form.

Dorset County Council (2008, updated 2012), *Guidance on the Placement of a pupil outside his or her normal age group*. [Online] Available at: <http://www.dorsetforyou.com/> (Accessed: 04 December 2013)

Dorset County Council (2013) *Application for placement outside of normal age group*. [Online] Available at: <http://www.dorsetforyou.com/> (Accessed: 04 December 2013)

School Admission Appeal Code 2012 (Available at: <http://www.education.gov.uk/aboutdfe/statutory/g00213244/school-admission-appeals-code-2012>)

- The attached form consists of downloadable Word document titled, ‘*Application for placement outside of normal age group*’. This form asks the parent to complete various sections, including their reason for the request. It also requires the completion of various sections: “*Academic Progress, Social & Emotional Development, Physical Development, Child/Young Person’s Views [and] Views of other professionals*”. Parents are asked to supply details of professionals consulted and attach signed letters of support/reports, and parents must also sign a declaration.

- **London Borough of Hounslow**

*“2014/15 – Applicants whose children have **birthdays in the summer term** should be aware that, if they **wish to defer**, they will **need to apply for a Year 1 place** for the following September and if the school is oversubscribed they are **very unlikely to obtain a place.**”*

London Borough of Hounslow (2013). *Hounslow Nursery and Primary Schools Admission Criteria for September 2014*. [Online]. Available at: <http://www.hounslow.gov.uk/index.htm> (Accessed: 30 Nov 2013)

- **Norfolk County Council**

“A parents' guide to admissions to schools in Norfolk

If I don't think my child is ready to start school can they start in Reception the following year?

*If you believe there are **exceptional reasons** why your child should start school in the following year you should provide them in writing and the county council will consider your request. **We would expect there to be significant educational and/or social reasons supported by an appropriate professional.**”*

Norfolk County Council (2013). *A parents' guide to admissions to schools in Norfolk* [Online]. Available at: <http://www.norfolk.gov.uk/index.htm> (Accessed: 03 December 2013)

- This is the local authority that services Elizabeth Truss MP's constituency. It is clearly at odds with communication from the DfE to parents, which says, “**It is the government's view that there does not need to be any exceptional reason or special need for a summer-born child to enter reception rather than Y1 at compulsory school age.**”

- **Oxfordshire County Council**

“ADMISSION TO AN OLDER OR YOUNGER AGE GROUP

***Children considered for late transfer to primary or infants' school would almost certainly have a Statement of Special Educational Needs.** Discussion relating to late transfer would normally be initiated within an annual review of the child's Statement of Special Educational Needs.”*

Oxfordshire County Council (2013). *Determined Admission Arrangements Community And Voluntary Controlled Primary & Infants' Schools 2014/15 Onwards*. [Online] Available at: <http://www.oxfordshire.gov.uk/cms/> (Accessed: 30 November 20 13)

- **Portsmouth City Council**

“Deferred entry – All reception children are usually admitted at the start of the autumn term in the year in which they will be five. Parents have the right to request to defer entry until the beginning of the school term after their child's 5th birthday, or request that their child attends on a part-time basis until the child reaches compulsory

school age. However, **parents cannot defer entry until September 2015, which is a new school year. In that case a new application for entry into Year 1 for that school year would be necessary.**"

Portsmouth City Council (2013). *Admission to primary and secondary schools Information for parents 2014/15*. [Online]. Available at: <http://www.portsmouth.gov.uk/> (Accessed: 30 Nov 2013)

- **Reading Borough Council**

"If you do not want your child to start school until September 2015 you will need to apply for a place in Year 1. However, the school may then be full because the places have been allocated to children in the previous school year."

Reading Borough Council (2013). *Admissions to Primary/Infant/Junior Schools 2014-2015* Available at:

<http://www.reading.gov.uk/residents/EducationandLearning/Schools/Admissions/admissions-primary-infant-schools-2012-2013/> (Accessed: 30 November 2013)

- **Shropshire Council**

"Primary – All children in Shropshire are entitled to start school in the September following their fourth birthday. Parents may also defer entry to school until later in the year or until their child reaches compulsory school age (the term following their child's fifth birthday) or elect for their child to attend part-time. Where summer born children defer entry to September they will be admitted into Year 1 (not Reception) and will need to make a separate application as their previous application cannot be held over into a different academic year."

Shropshire Council (2013). *Learning & Skills Group Determined admission Arrangements 2014/15*. [Online]. Available at: <http://shropshire.gov.uk/> (Accessed: 30 Nov 2013)

- **Suffolk County Council**

"Please note that if your child was born between April and August and you have already been offered a place in a school but then wish to delay your child starting until the following September, the place will be withdrawn and you must re-apply for a place on an in-year application form (CAF2) for Year 1. This is because September is the start of a different academic year. You should be aware that there may no longer be a place available. If it can be offered your child would move straight into Year 1 of the school rather than into the Reception Year. Before making this decision we strongly recommend that you seek advice from the Admissions Team in order to check the availability of places at the school for entry into Year 1."

Suffolk County Council (2013). *Admissions to Schools in Suffolk 2014/2015 Your guide on how and when to apply for a school place*. [Online]. Available at: <http://www.suffolk.gov.uk/> (Accessed: 30 Nov 2013)

- **Swindon Council**

"Delayed Admission – Where a parent or guardian chooses to delay their child's admission beyond the current school year, the place originally offered cannot be held and a fresh application would be required. Children whose entry is delayed by this means would be expected to join their chronological peer group, i.e. in Year 1." [and]

"A child whose parents defer entry until September 2015 will start school in their statutory year group by birth. This will mean that children can start an academic year later than other children in the same class."

Swindon Borough Council (2013) *Primary and Infant to Junior Co-ordinated Admissions Scheme 2014-15*. [Online]. Available at: <http://www.swindon.gov.uk/Pages/Home.aspx> (Accessed: 30 November 2013)

[and]

"Delayed Admission - Where a parent or guardian chooses to delay their child's admission beyond the current school year, the place originally offered cannot be held and a fresh application would be required. Children whose entry is delayed by this means would be expected to join their chronological peer group, i.e. in Year 1."

- **Torbay Council**

*“The deferred admission arrangements do not allow summer born children to defer admission to the Autumn Term in year 1. **Parents with summer born children who do not want their child to start school until the Autumn Term of year 1 will need to apply through the in-year process and should be aware that many schools will have no places available.** [and]*

*Delayed Admission to Primary School – **This is allowed only in very exceptional circumstances where there is significant evidence from educational professionals** that this would be in the best interests of the child. The final decision lies with the admission authority. Once a child has been admitted to a year group outside their chronological year group, they will normally continue with this group throughout their schooling.”*

Torbay Council (2013). *Primary School Admissions 2014/2015 Torbay Information for Parents and Students Tips 5*. [Online]. Available at: <http://www.torbay.gov.uk/> (Accessed: 30 November 2013)

AN EXAMPLE OF LAWFUL BUT UNFAIR PRACTICE

In the extract below, the admission authority has taken on board the DfE’s July 2013 summer born advice, so it cannot be accused of disregarding it. However, the practicalities of the DfE’s guidance present an arduous task for parents, requiring them to seek ‘*permission*’ for a ‘*delay request*’ and enter into discussions with more than one school and/or council authority if their primary school application preferences do not all fall under the responsibility of the same admissions authority. But moreover, as this authority makes clear, since it is entirely possible that a parent will receive permission to apply in the admissions round for the academic year in which their child reaches compulsory school age from one admission authority but not another, their preference of a Reception ‘*entry*’ class to primary school is not guaranteed and could be unsuccessful – if (for example) the school that has agreed is oversubscribed and the child is out of catchment, while the school that is within catchment has places but has not agreed to accept the child in Reception.

- **Cheshire East Council**

*“If you are a parent of a summer born child, your son or daughter will not reach statutory school age for almost a full school year after the point at which they could first be admitted to school. If you are considering delaying admission until the following academic year rather than applying for admission to your child’s chronological peer group, you will need to discuss this with the schools that you are thinking of applying to. Your views will be fully considered and you will receive advice from the school to help you decide on the best course of action before a decision is taken by the relevant admission authority. **You will also need to discuss your intentions with your home local authority** in order that arrangements can be made to include your child in the relevant school admission application round, if this is agreed. This is to ensure that you do not miss out on important information about applying for school places... For non-statutory guidance published by the Department for Education (DfE) about summer born children, please visit the DfE website at www.education.gov.uk/f00227046/advice-on-the-admission-of-summer-born-children]*

*If the admission authority agrees to a request to delay admission until the following year, this does not guarantee a place in the reception class at that school. The decision on the application for reception, which will need to be made through the normal admission round, will be based on the published admission arrangements as for all applications. Therefore, parents and carers need to be made aware that **an application for an oversubscribed school could be unsuccessful, even though the application for delayed entry is supported by the admission authority.**”* Cheshire East Council (2013). *Applying for school places, Cheshire East guide for parents and carers 2014-15*. [Online]. Available at: <http://www.cheshireeast.gov.uk/> (Accessed: 30 Nov 2013)

ADMISSION AUTHORITY COMMUNICATION

UNLAWFUL AND UNFAIR ADMISSION ARRANGEMENTS (as per DfE July 2013 advice)

The examples below are of actual correspondence from Admissions Authorities (schools and councils). It is worth reading them in the context of the DfE's message to parents that "**there does not need to be any exceptional reason or special need for a summer-born child to enter reception rather than Y1 at compulsory school age**" and Parliamentary Under Secretary for Education Elizabeth Truss' assertion in September 2013 that, "**We are absolutely clear that parents should be able to say to a school, "We want our child, who is aged five, to enter reception", if they feel that that is in the best interests of their child.**",

On the contrary, it is absolutely evident that in practice, **the statutory guidance and non-statutory advice published by the DfE in 2012 and 2013 is NOT CLEAR on this.**

- **Example A**

"All children born between 1 September 2008 and 31 August 2009 should be in the current Reception year group..."

"You would not be able to apply for a Reception place if your child should be in Year 1."

"...so that the admission authorities concerned can make an informed decision about your application, I would also request that you provide documentary evidence detailing why you and any other key professionals, believe it to be in... best interests to be educated outside his normal age group..."

Finally, I must advise you that applications of this nature (i.e. requests for a child to be taught outside his or her normal age group), it is usual practice for the Local Authority to seek advice from its Educational Psychology Service.

Once all parties are in receipt of documentary evidence from you, the relevant admission authorities will be in a position to consider if it would be appropriate to admit [Child] into Reception Class in September 2014."

- **Example B**

"[Authority] policy is for children to be educated within their chronological year group, within the curriculum differentiated as necessary to meet the needs of the individual children. If parents/carers believe their child(ren) should be educated in a different year group they must, at the time of application, submit supporting evidence from relevant professionals working with the child(ren) and family, stating why the child must be placed outside their normal age range appropriate cohort."

- **Example C**

"Our admissions arrangements explain that where a parent decides to defer entry for a summer born child until they are of statutory school age, they would have to re-apply for a Year 1 place. This policy is consistent with the School Admissions Code."

“Our admissions policy enables parents to apply for a place in a different year group which we, or the admission authority for the school, will consider based on the circumstances of an individual case. In order for us to consider this, **a parent would have to provide evidence to demonstrate that there are exceptional reasons for their child being in a different year group.**”

“Should there be a change in the regulations about these matters I can assure you that the county council will comply with them.”

“As confirmed by our Legal Team, [Authority] will not consider an application for a child to be educated below or above their normal chronological year/age group unless there is evidence provided to support the request outlining the specific needs of the child.”

“. . . you will need to provide evidence to support this request. However, it is only in very exceptional cases that this would be agreed.”

“your child can start school in September 2014 when he becomes of statutory school age but he will enter Year 1 as this will be within his chronological year group/age group.”

“However, the advice from the DfE is non-statutory which means that as a local authority we do not have to change our current policy or practices as a result of this guidance being issued.”

“If you wish your child to be admitted to a school year group outside his chronological age group, your application will be considered if you provide supporting evidence which specifically states why your child would be disadvantaged socially, emotionally and academically by being admitted to the normal chronological year group group and this will be considered by an Officer Panel.”

- **Example D**

“As a Local Authority, we cannot make a judgement that [Child] must be educated out of year group until they have experienced time in the Reception class with the other children, including ‘summer borns’. We have no supporting evidence, for example from a medical practitioner or nursery class teacher to show that they may not be able to cope.”

- This approach has led to a number of cases where children have been forced to start school early, only for serious problems to arise, parents complain and the children start Reception class all over again the following year; this causes immense stress for the family involved and means another family misses out on a school place in the year of the child’s first entry into Reception class.

‘Supporting evidence from relevant professionals’ is what the Local Authority require as published in our co-ordinated admission arrangements, with regard to out of year group requests.”

“When considering such a request for a child to be held back a year, the panel are mindful that all [LEA] schools support, and are able to support, children with a wide range of abilities, special needs, disabilities and learning difficulties, from able, gifted and talented pupils to those with multiple and significant disabilities, medical conditions and learning difficulties. Where the experience, training or expertise to deal with a particular pupil does not already exist within a school, a variety of external training and support would be available to ensure the school could cater for the pupil’s needs.”

- Resources appear to be plentiful and willingly provided to parents who enrol their children earlier than compulsory school age and whose children exhibit problems as a result, yet having a chronologically older child in the class (though still age 5 throughout the whole academic year in many cases) can be considered too great a challenge or a drain on resources.

*“School admission authorities are responsible for making the decision on which year group a child should be admitted to based on the circumstances of the case. Indeed for the younger children within the cohort, as a Local Authority, **we inform parents of the option** to start in the reception class on a part-time basis until the child reaches statutory school age or defer the start date until later within that academic year. This way the school can work in partnership with the family and if it is necessary, put additional support in place to enable the child to settle and work alongside their peers. **In the event both the school and family are concerned that the child’s needs are not being met within their chronological age group, at this time such information can be presented to the Local Authority** for an application to be submitted for a school place the following year.”*

- **Example E**

*“[Child] was born on [Date] August and this in itself would not constitute a sufficient reason to delay... school entry.... **There are no mitigating factors such as preterm birth, disability, special educational needs or missed schooling.**”*

- Peculiarly, missing Reception class if starting school at compulsory school age is not considered as missing schooling.

*“An application for the current reception intake could be submitted and once a place has been offered, you may wish to discuss with the school the options that may be available to you, such as deferring entry until later in the academic year or alternatively **an application could be made for entry from September 2014, but this would be for a place in year one and not reception. Applications for a place in year one would be considered a term in advance of the required admission date.**”*

- **Example F**

*“Where a parent wishes to defer entry to the following September but enter in the reception class, out of a child’s chronological cohort, a fresh application must be made under the LA’s co-ordinated primary admissions policy for that year of entry. This is called delayed entry. **Such a request must be supported in writing by an educational, medical or social care professional independent of the family, demonstrating a serious detriment to the child if he or she were not to be admitted into reception the following September. For there to be a detriment to a child by being admitted into his or her chronological year group, the [Authority] would expect very exceptional circumstances to be demonstrated.**”*

At the request of the parent, the (council) admission authority provided them (two months after the initial request) with a copy of its internal ‘Policy for Delayed Admissions into Primary School’, which says *“**Where a parent wishes to defer entry to the following September but enter in the reception class, out of a child’s chronological cohort, a fresh application must be made under the LA’s co-ordinated primary admissions policy for that year of entry. This is called delayed entry. Such a request must be supported in writing by an educational, medical or social care professional independent of the family, demonstrating a serious detriment to the child if he or she were not to be admitted into reception in the following September. For there to be a detriment to a child by being admitted into his or her chronological year group, the LA would expect very exceptional circumstances to be demonstrated.**”*

- Absolute age is not a reason for any family to be in contact with either educational or medical professionals. This uncontrolled requirement by admission authorities for such ‘evidence’ to be provided appears to suggest ultra vires on the part of admission authorities.

- **Example G**

*“...would need to be provided with **supporting evidence** for this request, **setting out her emotional and physical needs, and to have this evidence assessed by a panel, for agreement by the Director of Learning**”.*

- When a parent asked this (council) admission authority how ‘delay’ requests would be assessed, they were advised that in light of the DfE July 2013 advice, it would be establishing a ‘panel’ to consider these requests, envisaged to be made up of a Senior Educational Psychologist, Head of Service for School Places and Admissions, a representative from Special Educational Needs, a Clerk and a GP, and that guidance would be sought from the Council’s Chief Medical Advisor. An established medical panel would then advise the authority on whether ‘back classing’ is necessary. A draft copy of the guidance for this panel (still in development) was provided to this parent.
- It is this panel that will decide if applications of children with no SEN statement are to be considered as medical or not (the draft guidance reads, *“**The purpose of the MEDICAL Panel is to consider requests for applications to be considered as MEDICAL.**”*)

The DfE’s July advice 2013 states, “Q6. *I was told that, where a summer born child starts school in the September following their fifth birthday, they can only be admitted to reception rather than year 1 if they have special educational needs. Is this correct?*

A6. *No. The law does not prescribe the year group a child should be admitted to. **Special educational needs is just one of a number of reasons why** a child may be educated outside their normal year group.”*

- This admissions authority is clearly seeking to review and class summer born cases as ‘exceptional’ and this appears to have become widespread. It also appears that the DfE’s failure to make necessary amendments to the Code and instead publishing accompanying ‘advice’ has exacerbated admissions authorities’ insistence on searching for exceptional reasons or special needs to account for a summer born child entering Reception class at age 5 rather than Year 1.

- **Example H**

*“. . . [Child] is not on the waiting list for a Reception place as according to his date of birth he is a Year 1 child. **I know that you requested that he be kept back a year but we are not able to do that so he will be included in the waiting list for Year 1.**”*

*“. . . I will be happy to consider any request for [Child] to be placed out of year group if it is **accompanied by supporting evidence** that this would be in his best interests.”*

*“. . . we contacted the two own admission authority schools for which you had applied and asked them to consider whether they could offer a place in reception for September. **Both replied that they were currently unable to do so without evidence of a compelling need... to be out of year group.**”*

“...parents are entitled to defer their child’s school place until the term after they reach statutory school age ie until the term after their 5th birthday. Admission authorities must therefore offer parents the option of deferring

their child's entry until later in the school year. However, the exception is for summer-born children, who, although their official start date would be in the September following their fifth birthday, cannot have their place deferred beyond the school year for which they applied. So parents would have to make a new application to the school for delayed entry. **Usual practice is that entry is then into Year 1, ie the child's normal age group.**"

- **Example I**

"Out of year group applications are **only agreed in exceptional cases where there is strong supporting evidence from medical and/or educational professionals.**"

- **Example J**

"Where a parent wishes to defer entry to September 2014 but enter in the Reception class, out of the child's chronological cohort, a fresh application must be made under the Co-ordinated Primary Admissions Scheme for that year of entry. This is called delayed entry. **Such an application must be supported in writing by an educational, medical or social care professional independent of the family, demonstrating a serious detriment to the child if he or she were not to be admitted into Reception in September 2014. For there to be a detriment to a child by being admitted into his or her chronological Year Group, the LA would expect very exceptional circumstances to be demonstrated.**"

Devon County Council (2012). Protocol for Deferring or Delaying Entry to Primary and Infant School Reception Classes for admissions from September 2013. [Online] Available at: <http://www.devon.gov.uk/index.htm> (Accessed: 01 December 2013)

- This extract appears in a local (council) admission authority's internal policy document, 'Protocol for Deferring or Delaying Entry to Primary and Infant School Reception Classes for admissions from September 2013', and again demonstrates that admissions authorities consider these cases as 'exceptional' and illustrates precisely how the compulsory age for starting school *has* been effectively lowered – again, it is only in "very exceptional circumstances" will a child be afforded their legal rights; rights that should not be negotiable.

- **Example K**

"[Child] would have to start in year 1, the correct year group for his date of birth (school admissions is always based on date of birth as this is clearly documented and not open to interpretation, in this way everyone is treated equally). I have to warn you that this is a very full year group in your area and a place may be very hard to find at that stage.

"A late start to reception is very unusual indeed (not even 1 in 1,000) unless the child has a statement of special educational need...

"If you went ahead with this request formally **you would be responsible for providing significant professional evidence for your preferred school to consider to show that this was the best way to meet [Child's] needs,** neither the school nor the County Council would have any duty to help you with this."

"Another potential problem, admittedly a long way off, would be transfer to secondary school; the admission authority for **your preferred secondary school might refuse to agree to a late transfer to year 7.**"

- **Example L**

"The option to stay down a year is not mandatory currently so the decision lies with the school governors and as an LA we cannot direct a school to take this action... **Should the law change around this issue** then admissions policies will have to include this change but that could not happen until 2016."

CONFLICTING COMMUNICATION FROM THE DfE

This is one of the key drivers of confusion and misinterpretation of legislation in the whole summer born admissions issue, and it's crucial that the Department for Education now recognises and remedies its failings in communicating consistent information to everyone involved. DfE messages, both written and verbal, very often conflict with one another, and exacerbate an already challenging situation. Below are just some examples:

DEPARTMENT MINISTERS

Looking at the communication from relevant key players in the DfE alone, there are significant and fundamental contradictions regarding the admissions arrangements of summer born children, which is wholly unacceptable.

- The Rt Hon Michael Gove MP, Secretary of State

Leaving aside his March 2013 letter containing an incorrect definition of the compulsory school age in England ("**All children must start school by the time they reach their fifth birthday**"), in January 2012, during an oral evidence session held by the Select Education Committee, Mr Gove responded to a question from the charity *Bliss*, regarding school start flexibility for summer born children, by saying, "**We want children to be in school learning as quickly as possible.**" And it is in this context that the Education Secretary insists on maintaining that powers to decide on admissions year group at entry to school should remain with local admission authorities (in the full knowledge that their decisions are at odds with parents' wishes), simply because the 2012 Code says so. This is despite other relevant primary legislation, and despite growing evidence of complaints from parents over a period of more than one year. Mr Gove has reiterated the information provided in the DfE's July 2013, saying, "**I would expect admission authorities to give careful consideration to the needs of the child and the possible effect on them of entering year 1 without first having attended reception class**", but there is no information forthcoming on the sanctions that can or will be taken by the DfE in cases where this expectation is not met, and in fact, numerous parents have received communication from the DfE stating that irrespective of their concerns about their child, the DfE will not rescind local authority powers in this matter.

- The Rt Hon David Laws MP, Minister of State for Schools

Cabinet Minister David Laws has now written letters to a number of parents who have contacted the DfE for help regarding the admissions process of their summer born children, in which he simply reiterates what the July 2013 advice says, and states, "**we have no plans to change the School Admissions Code at present. Our advice is still relatively new, and the Department will be undertaking an evaluation of its impact in due course.**" This report demonstrates that its impact is already clear *now*, and given the January 15, 2014 deadline for September 2014 admissions applications, and the fact that there will be parents in April who are refused their preference of a Reception class entry for their 5 year-old summer born child unless the DfE intervenes, it raises serious questions about the DfE's decision to wait until "*due course*".

Additionally, when the Secretary of State was asked (via one of the author's MPs) under what powers an admissions authority can require an assessment following a parental request that her summer born son start school in Reception class at compulsory school age, Mr Laws advised that paragraph 2.17 of the 2012 Code applied and it would appear that the admissions authority wants to use this assessment to gather more information. In effect, his response inferred no objection to it, and yet the Code states that admission

arrangements must not [1.9a] “place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements” or [1.9m] “interview children or parents”. It is very concerning that the Minister appears to accept what is an unfair and possibly unlawful admissions arrangement.

- Elizabeth Truss MP, Parliamentary Under Secretary of State for Education & Childcare

Contradicting the position of her colleagues above, and as set out on page 16 of this report, Ms Truss’ message is clear: the DfE thinks parents, and not local admission authorities, should be “**empowered**” to make the decision regarding which class a summer born child enters at compulsory school age (i.e. Reception or Year 1). In addition to her statements in Parliament on September 4, 2013, Ms Truss is also quoted in an October 9, 2013 Nursery World article saying, “we have also recently issued guidance on summer born children clarifying that, **at aged five, they can join reception class if their parents don’t think they’re ready for Year One.**” Evidently, the DfE advice does *not* clarify this sufficiently, and in fact **Ms Truss’ own constituency** local authority says it would expect “exceptional reasons [and] significant educational and/or social reasons supported by an appropriate professional”.

- Lord Nash, Parliamentary Under Secretary of State for Schools

Lord Nash provides the foreword in the May 2013 Governors’ Handbook for governors in maintained schools, academies and free schools. He writes, “I want to strip away unnecessary rules and regulations and make sure governing bodies understand their legal duties [and] **I want all governing bodies to feel empowered** to provide strong strategic leadership and to hold their school leaders to account.” Though not in an admissions context, this is slightly at odds with Ms Truss’ statement in Parliament (“What we want to do is to **empower parents**”) but nevertheless, Lord Nash did intervene to help one of the report authors in her efforts to ensure a Reception class start at age 5 for her summer born child. After (eventually) gaining agreement from her local admissions authority that an application to her preferred schools could be made for Reception class, the author received news that one of her preferred schools had converted to an academy and that another would soon be converting to an academy (and therefore now their own admissions authorities); faced with the same battle all over again, she contacted the DfE via her local MP.

As Minister responsible for Academies, Lord Nash very interestingly cited the leading section of **2.16** and **2.16 b**) of the 2012 Code in his letter (and not 2.17, which the DfE says is applicable to summer born children), with the result that the academy school head teacher agreed to honour the delay request put in place by the local authority.

EARLY YEARS FOUNDATION STAGE – WHO IS IT FOR?

The DfE has very clearly outlined the importance of a child experiencing Reception class (part of the Early Years Foundation Stage) prior to entering Year 1, but is silent on the provision for any 5 year-old summer born children who might be in this class, as the following examples demonstrate:

- 2011 Supporting Families in the Foundation Years: “**reception classes will consolidate and extend children’s learning before moving to key stage one...** Within the foundation years, **the reception year,**

as children approach the transition to key stage one of the National Curriculum, **is particularly crucial**. By this stage children are in school and the proposed reforms to the EYFS will support primary teachers improve the transition to key stage one further, **making the most of the opportunities offered by the substantial investment in this stage of school**, including the leadership of a qualified teacher.”

Interestingly, in the context of children’s ages, school nurses are discussed here too, and put summer born children firmly in the right age for Reception class. It says, “nurses are responsible for the Healthy Child Programme **for children aged five to nineteen**... Health visitors focus on children from birth to five and their families, whilst school nurses work with and support **school-aged children from reception onwards**.”

- 2012 (April 26) Families in the foundation years - Joining reception class: “**Making a good start in the first year of primary school, known as reception class, is critical in enabling children to do well and enjoy their later years at school. Reception classes are part of the Early Years Foundation Stage and deliver the early years curriculum. By the end of their foundation years, children should be equipped for life and ready for the next stage of school**: healthy, sociable, curious, happy, active, and able to make the most of the opportunities available to them. Giving all our children a good start in life means that, as a society, we are investing in the future generation so that all children have the chance to be productive citizens and there is a fair opportunity for all to succeed.”

But while the DfE adds here that, “From this year, all children **can** start at primary school from the September following their fourth birthday, although this is not compulsory and parents can choose to defer their child’s entry until later in the year, up to their fifth birthday.”, it says nothing at all about summer born children who may be starting in the following academic year.

Omission of fact can be just as detrimental as an incorrect fact.

EYFS PROFILE – WHO IS IT FOR AND WHEN?

In 2012, the DfE introduced its ‘Early Years Foundation Stage Profile’; however, the information provided by the DfE to schools and parents, defining *who* the EYFSP is for and *when* it is carried out, is neither sufficiently nor consistently clear with regard to summer born children accessing Reception class at compulsory school age, as these examples demonstrate:

- DfE August 31, 2012: EYFSP “is a statutory assessment for children at the end of the Foundation Stage and is a way of summing up each child’s development and learning at the end of the Reception year.”
- DfE March 27, 2013: “children are assessed at the end of the EYFS (**the end of academic year in which a child turns five**).”
- DfE May 2013: “Changes that reduce burdens on maintained school governing bodies... Early Years... statutory assessment of children’s development **at age five**”
- DfE October 3, 2013: “Assessment... must be made **in the summer term of the academic year in which the child reaches age five**, in accordance with the statutory framework.”

- OFSTED September 3, 2012: EYFS “is the framework **for children from birth until the 31 August after their fifth birthday.**”

So what happens to summer born children at the end of the Reception year in which they turn 6?

Interestingly, communication from the DfE doesn't completely forget these children, but it does augment the idea that it is 'exceptional' for a summer born child to start school any later than age 4:

The EYFS 2014 handbook reads, “4.3 **Exceptions** and exemptions. The EYFS Profile should be completed during the summer term of the academic year in which a child reaches age five unless: **the child is continuing in EYFS provision beyond the year in which they turn five**; In these instances the practitioner should refer to the ARA for further guidance about the circumstances in which these decisions will be considered valid, and the associated requirements placed upon settings.”

But crucially, the ‘2013 Assessment and reporting arrangements Early Years Foundation Stage’, published by the Standards and Testing Agency (an executive agency of the DfE) and circulated to all “local authorities, headteachers, governing bodies and all Early Years education providers and education professionals with responsibility for assessing, reporting or moderating the EYFS Profile” (i.e. pre-school staff too – very often the first people parents talk to when they don't want their child to start school early), states:

“3.3.3 **Children who remain in EYFS provision beyond the age of five.** The expectation is that children will move with their peers and will therefore be assessed only once for the EYFS Profile. **In exceptional circumstances, after discussion and in agreement with parents, a child might remain in EYFS provision beyond the end of the academic year in which they reach the age of five. In these exceptional cases, assessment should continue throughout the child's time within EYFS provision and an EYFS Profile should be completed at the end of the year before the child moves on to the Key Stage 1 programme of study.** The setting should discuss its intention to defer the child's statutory assessment with the local authority EYFS Profile moderation manager. This will ensure the child's data is not considered missing when the setting submits EYFS Profile outcomes for the current cohort.”

The text above likely assumes that most, if not all, children will be in Reception class at age 4, and as such may well be referring to the ‘exceptional circumstances’ where a child repeats a year, but it nevertheless reinforces the idea that it's important from an administrative view that a child's assessment “data” is applied to a particular “cohort”.

It is also ironic that an “intention to defer” should be considered exceptional, given that any child born in two of the three ‘summer born’ months (i.e. July and August) will not even have reached the age of 5 at the time of assessment and completion of their EYFSP.

The publication of ‘FAQs on EYFS Profile assessment and moderation in 2013’ added to the now evident interpretation of the 2012 Code (i.e. virtually all children should be in school at age 4), and were even more detrimental to a summer born child's chances of starting in Reception class at age 5. One FAQ asked: “When should data be submitted for a child who remains in the EYFS for an additional academic year?” The answer:

“The expectation is that children will move with their peers and will therefore be assessed only once for the EYFS Profile. In exceptional circumstances, after discussion and in agreement with parents, a child might remain in EYFS provision beyond the end of the academic year in which they reach the age of five.”

Another document, the ‘*Early Years Foundation Stage Profile 2013 return (Business and technical specification version 1.0)*’ contains this: ***“For the purposes of this collection a 4 year old is defined as having a date of birth between 1 September 2007 and 31 August 2008. All maintained schools with four year olds are required to submit an EYFSP return, regardless of date of birth. Also, all funded 4 year old children in PVI’s (accounting for about 1.5-2% of the total FSP return) born between April and August should be included.”***

- So when should a summer born child who will join Reception class at compulsory school age be assessed? The answer is far from clear.
- For a child granted a ‘delay request’ and therefore exempt from the EYFSP at age 4, will it be carried out at the end of their Reception class year (when they’ll either still be 5 or possibly just turned 6)?
Or do they not have one?
- And if *all* children attending Reception class *do* have an EYFSP, given the requirements placed on a PVI setting to submit an EYFSP for summer-born 4 year olds, could this effectively mean some children will have two EYFS Profiles – once in the PVI setting and again on completion of Reception?
- For a child refused a ‘delay request’, and forced to join Year 1 when entering primary school at compulsory school age, they will have missed the entire final year of the EYFS and never had an EYFSP. Will they simply never be assessed via an EYFSP?

WHO IS ‘SUMMER BORN’?

There are other discrepancies in DfE documents pertaining to summer born children too. For example, in the DfE March 2013 document ‘*Results of the Early Years Foundation Stage Profile pilot*’, “summer born” is defined as “*May, June, July or August*”, and the same definition is contained in the DfE November 2013 document ‘*Early Years Foundation Stage Profile Attainment by Pupil Characteristics, England 2013*’, while in the DfE’s July 2013 advice it is defined as “*All children born from the beginning of April to the end of August*”.

Since the DfE says two of the “*primary uses of EYFS Profile data are... To support a smooth transition to key stage 1 by informing the professional discussion between EYFS and key stage 1 teachers [and] To help year 1 teachers plan an effective, responsive and appropriate curriculum that will meet the needs of all children.*” and the EYFS March 2012 Statutory Framework says it “*seeks to provide: equality of opportunity and anti-discriminatory practice, ensuring that every child is included and supported*”, it’s debatable whether summer born children have been adequately legislated for – or their educational rights protected. The Framework acknowledges that “*Children develop quickly in the early years and a child’s experiences between birth and age five have a major impact on their future life chances*”, but again, this focuses on the EYFS as provision for children no older than 5 at the end of the Reception class year.

FURTHER EVIDENCE AND EXAMPLES

This section contains miscellaneous information that is relevant to the issue of unfair and unlawful admission arrangements for summer born children, and is not presented by the authors in any order of importance.

- **High Stakes Gamble for Parents**

Since year group decisions are made by admission authorities and not parents, parents submitting an application for Reception class in over-subscribed areas, for the term following their summer born child's 5th birthday, are taking a huge (usually unacceptable) gamble – because if the school decides on Year 1 (in April, when places are being allocated or even at the time of application, in January), and there are (very likely) no places available in Year 1, the child misses out on a place in the school entirely. How many parents are going to take that risk? This implied or actual threat is precisely why so many parents succumb to the pressure of enrolling their children in school at age 4.

- **A Child's Rights**

On October 28, 2013, the DfE website published information on *The United Nations Convention on the Rights of the Child* latest report: “*This government is committed to the UNCRC and to its implementation... **The department for Education is the lead department with responsibility for implementing the UNCRC in England and for coordinating UK-wide reports, although each of the Devolved Administrations implements the UNCRC and addresses the committee's recommendations as appropriate to their own local requirements. The UK first reported to the UNCRC on 15 March 1994. Since then it has produced a further 3 periodic reports. The UK will be submitting its next (fifth) periodic report in January 2014.***”

One of the report authors submitted information and views about the new July 2013 summer born advice October 24, 2013 in response to the Government's call for views (see Appendix C). As the lead department in this area, the DfE has a responsibility to ensure that all admission authorities are making consistent decisions in the best interests of children, which is evidently not currently the case.

- **Emergence of Non-Statutory Admission Definitions**

Non-statutory phrases such as “*expected year group*”, “*chronological peer group*” and “*correct cohort*”, none of which appear in primary education legislation, have become completely entrenched in the language of admission policies and practices throughout the country. They are presented in communication with parents as though they *are* statutory, when in fact they are not.

- **Forgotten Children**

There appears to be **no EYFSP provision for summer born children who start Reception at age 5**, and yet this ‘age 5’ profile is currently carried out on numerous summer born children who are still only 4 years old and who started school a whole year earlier than compulsory school age.

In the research report, *DFE-RR017 Month of Birth and Education*, published in July 2010 (written during the previous Government and published by the DfE), it says, “*The Early Years Foundation Stage (EYFS) Profile provides information about each child's level of development as they reach the end of the academic year in which*

they turn five (year 1).” Ironically, information under the heading ‘Attainment During Compulsory Education’ pertains to the lower attainment of summer born children “at age five”, when in fact many of these children will have been assessed *before even reaching* compulsory school age.

- **Starting School at Age 3**

It is widely acknowledged that the start of the autumn term is September (hence the requirement in the Code for authorities to provide places for children in the September following their 4th birthday); however, research for this report discovered three local authorities whose standard school term dates have an autumn term start **before** 1st September :

- Leicestershire County Council
2013 – August 29, 2013
2014 – August 28, 2014
http://www.leics.gov.uk/index/education/information_about_schools/term_dates/term_dates_1314.htm
http://www.leics.gov.uk/index/education/information_about_schools/term_dates/term_dates_1415.htm
- Leicester City Council
2013 – August 29, 2013
2014 – August 28, 2014
<http://www.leicester.gov.uk/your-council-services/education-lifelong-learning/about-schools/termdates/>
- Rutland County Council
2013 – August 29, 2013
2014 – August 28, 2014
http://www.rutland.gov.uk/education_and_learning/schools_and_colleges_-_informa/school_-_term_dates.aspx

Admission authorities must provide for the admission of all children in the September following their 4th birthday (this is prior to compulsory school age) and there is no duty on a parent to take this up; therefore authorities with an autumn term starting date *prior* to September 1st might potentially be admitting 3 year-olds into Reception class (i.e. summer born children with birthdays in the last days of August). It’s possible of course that the entry of these specific children could be delayed by a few days, but it does demonstrate clearly how far admissions policies for 4 year-olds have moved from the original premise of admitting ‘*rising fives*’ to school (see p.58).

- **Junior and Secondary School Time Bomb**

The July advice makes clear that even if entry to Reception class at age 5 is achieved, it is still for the next school in a child’s education to decide on year group entry:

“Q9. If a child is educated outside of their normal age group whilst in primary school, what happens when they move to secondary school?”

A9. It will be for the admission authority of the secondary school to decide whether to admit the child out of their normal age group. Admission authorities must make decisions on the basis of the circumstances of each case, and will need to bear in mind the year group the child has been educated with up to that point.”

Consequently, there are further battles ahead for many parents, and not only when they move from primary to secondary, but also if they move from infant school to junior school, or if their parents relocate. Incidentally, Stone King solicitors have said, *“At secondary level, we consider that parents of a child in Y6, no matter what the background is to the child’s presence in Y6, **should be dealt with through the co-ordinated admissions process for entry into Y7 irrespective of the child’s date of birth. Acting otherwise seems to us to be irrational and challengeable, even though the Admissions Code suggests otherwise.**”*

- **Funding Influence and Incentive**

The Early Years Single Funding Formula (EYSFF) reforms mean that all local authorities must provide funding for free nursery education for 3 and 4 year olds. As of September 1, 2012, local authorities must provide for 15 hours per week for all eligible children, over at least 38 weeks each year, from the eligible date following their 3rd birthday (1st January, 1st April or 1st September) until they reach compulsory school age (the beginning of the term following their 5th birthday). This is the equivalent of 6 terms free pre-school education (up to 15 hours per week) for each child, but very, very few children use their full allowance because they have already entered Reception class in primary school before reaching compulsory school age.

With entry in the September following their 4th birthday:

Autumn born children use	up to 5 terms of their EYE entitlement
Spring born children use	up to 4 terms of their EYE entitlement
Summer born children use	up to 3 terms (<i>just half</i>) of their EYE entitlement

Now look at the difference that EYE funding and primary school admissions practice can have on the final overall potential cost of a child’s primary education (funding for EYE + primary school education (PSE) number of terms per child), not including examples of deferred entry with a start date in January or April:

Autumn born entering Reception class age 4	= 5 terms EYE + 21 terms PSE	= 26 total
Spring born entering Reception class age 4	= 4 terms EYE + 21 terms PSE	= 25 total
Summer born entering Reception class age 4	= 3 terms EYE + 21 terms PSE	= 24 total
Summer born entering Reception class age 5	= 6 terms EYE + 21 terms PSE	= <u>27 total</u>
Summer born entering Year 1 class age 5	= 6 terms EYE + 18 terms PSE	= 24 total

Evidently, a Year 1 start at age 5 appears much cheaper than Reception class (24 total terms to fund versus 27), but aside from the fact that this does not take into account the well documented additional SEN costs more frequently associated with summer born children once they are *in* school, it is not sufficient reason to deny access to a full primary school education. If deemed appropriate, the DfE could allow parents choose where the money on their child is spent – on EYE provision or access to Reception class – for example:

Summer born entering Reception class age 5	= 3 terms EYE + 21 terms PSE	= <u>24 total</u>
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This would still be less than the cost of provision for either an autumn or spring born child, and matches the EYE provision that most summer born children receive when entering Reception class already. However it is not the remit of this report to propose new pre-school funding policy but rather to highlight that it’s unacceptable to pretend that all children have access to 6 terms of EYE funding without penalty, when in reality the penalty is clear – **remain in an EYE funded setting as a summer born child and you will lose access to Reception class.**

The DfE's document *'School Census Spring and Summer 2014 guide for primary schools'* states that the maximum entitlement for funded hours for 2-3 year olds is 15 hours and for 4-year olds it is 25 hours, which appears to coincide with the school week (30 hours minus 5 for lunch-time). However if, instead of being in primary school, that 4 year-old is attending a private, voluntary or independent setting (PVI) (e.g. nursery or pre-school), a very different calculation is made: Local authorities are required to deliver funded early education through early years providers and the maximum funding for a 4 year-old child attending a PVI is capped at 15 hours. Therefore, the amount of funding available for 4 year-olds is dependent on the type of early years provision the child receives. The DfE refers to this type of provision as *'early education'* and schools that admit children age 3 and over are exempt from registering as early years providers with Ofsted. Consequently, local authorities, and particularly community and voluntary controlled schools, may be keen to enrol 4 year-olds in school early, rather than have them stay on at a private provider as this keeps the money in *'their system'*.

Finally, there are three censuses taken in primary schools each year, one in each term, and pupil numbers are used to allocate funding to LEAs and schools: October (autumn), January (spring) and May (summer). Some parents have found it difficult to defer Reception entry until later in the academic year and it would appear that some schools are reluctant to allow something that may affect the funding they receive. Ironically, for a summer born children starting school in Reception at age 5, losing money should not be an issue, since the child will still be funded for a full 7 years of primary school; but for *any* child (summer, spring or autumn-born) deferring entry until later in the academic year, it is highly possible that many decisions are influenced by financial incentives that have little to do with the best interests of individual children.

- **Fiscal reports in 2013 and 2007**

In 2013, the Institute for Fiscal Studies report *'When you are born matters'* stated, *"It would be possible for August- and September-born children to have the same amount of schooling prior to a given birthday in the unlikely event that those born in August start school a whole year later than those born in September. (We say **'unlikely'** because this would only be possible if August-borns started school at the statutory age (i.e. the term after they turn 5), while September-borns started in the term in which they turn 4, which is earlier than under most admissions policies currently in operation in England.)... Of course, this does not say anything about whether it would be better for all children to start school a whole year older, for example in the September after they turn 5 rather than 4. Unfortunately, **there is not sufficient variation in our data for us to be able to draw robust conclusions about this important question.**"*

Nevertheless, the IFS researchers went on to conclude, *"It is not necessary to give parents more flexibility over the age at which their children start school... [and] While our findings do not directly address the issue of whether parents should be allowed to delay (rather than defer) their child's entry to school, we would argue against introducing such a policy..." p.49* The Institute For Fiscal Studies (2013). *When you are born matters: evidence for England IFS Report 80* [Online]. Available at: <http://www.ifs.org.uk/> (Accessed: 03 December 2013)

Conversely an earlier *'When you are born matters'* report published by the IFS in 2007, suggested that flexibility for poorer parents should be supported by nursery places equivalent to school hours (as stated above, summer born children who wait to start school until age 5 are currently entitled to 15 hours of free EYE funding per week, so there is additional cost involved if parents are working and require full-time care provision until their child reaches compulsory school age). The authors said, *"It seems clear to us that if flexibility over school starting*

age were to be seriously considered, then fulltime nursery provision would need to be offered as an alternative to full-time schooling.”

Aside from the fact that flexibility already exists in law (but not explicitly highlighted in the 2012 Code), this demonstrates again the possibility that policy decisions may have been influenced by potential funding implications. Crawford, C., Dearden, L. and Meghir, C. (2007), When You Are Born Matters: The Impact of Date of Birth on Child Cognitive Outcomes in England, Centre for the Economics of Education (CEE) Report to the Department for Children, Schools and Families, [Online]. Available at: <http://www.ifs.org.uk/publications/4073> (Accessed: 03 December 2013)

- **Tax and Pension Influence and Incentive**

A summer born child who starts their primary school education at age 4, one whole year prior to compulsory school age, will complete their education and enter the world of work one year sooner than if they join Reception class at age 5. Regardless of their eventual education attainment, once they begin work and paying tax, they will be contributing to the state.

In terms of reaching pensionable age however, which is conditional on a person’s actual *date* of birth, and not *year* of birth chronological cohort, the child who starts school at age 4 will wait up to a year longer than some of their school peer group before being able to draw their pension. Thereby elongating their working – and taxpaying – life even further. The report authors have no evidence that the Government has ever formally considered this, but nevertheless, the long-term difference of a child’s school starting age is interesting to note.

- **Legal Repercussions and Costs**

On September 10, 2013, Stone King solicitors published an article on its website stating, *“If one reads the legislation in its strict terms, it is no more than the expression of a preference for a school... **in any meaningful terms, preference indicated by an application for a place, especially if the application is made in the routine procedure, carries with it a necessary implication that the preference can only be properly complied with by an offer of a place in the year group that the parent wants. Any failure to meet that implication must, in our view, give rise to the statutory right of appeal and whilst in many respects the Admissions Code has the force of law, our view is that it cannot take away rights conferred by an Act of Parliament.**”* It continues, *“Our strong view is that at primary level **a request in respect of a summer-born child to defer a year should be agreed to unless there are compelling reasons why the child should start school sooner.**”*

If an admissions authority has based its decision not to admit a summer born child into Reception class at compulsory school age on a set of unlawful admission arrangements, which do not comply with the Code **and** all other relevant legislation, then it would appear that the decision may be unlawful. As such, a parent could take the legal route with a view to a judicial review. If found in the parent’s favour and the admissions arrangements were judged to be unlawful, every other unlawful decision previously taken – whereby a parent has been refused a place in Reception class based on the same unlawful arrangements – could in theory be retrospectively challenged by parents. It is in fact remarkable that this situation has not already occurred to date, but one possibility is that the parents most likely able to pay for such legal recourse can also afford to shop around and privately educate.

Notably, Stone King solicitors also wrote in their September 2013 article that when they contacted the DfE asking if it would strengthen the July guidance, *“by making it clear that an application for a place in the ‘wrong’*

chronological age group should be agreed to unless there are exceptional circumstances”, the DfE advised it was not aware of any problems in practice. If true, this appears to be a lack of openness and honesty on the part of the DfE, as it was absolutely aware of problems at that time (Elizabeth Truss, MP. HC Debate September 4, 2013, “We have a working group on admissions, which is monitoring this issue. As a Department, we will also be monitoring any complaints made by parents...” and Appendix A: meeting with campaigners in January 2013).

- **Forced Year 1 Entry can Set Children up to Fail**

From the Standards and Testing Agency Business Plan 2013 - Phonics screening check: *“STA is responsible for the development and delivery of the phonics screening check. For maintained schools, academies and Free Schools (where it is part of their funding agreement) with Year 1 children, as well as those with **Year 2 children who did not meet the standard last year.**”* The authors of this report note that failure to meet the standard in Year 1 is far more likely in children who have missed out on their entire Reception class year.

- **Impractical Complaints Process**

*“2. Complaints systems are always likely to be more accessible to the persistent and articulate. This makes it all the more **important that complaints systems are clear and easy to navigate**, so that they do not act as a barrier to the less articulate or less persistent (particularly disadvantaged groups).”* House of Commons Public Administration Select Committee Seventh Special Report of Session 2007-08

Since the 2012 Code says parents have no right of appeal if their lawful application for a Reception class place is denied (and a Year 1 place offered instead), making a complaint against a school admissions authority has been suggested. However, this can prove a very lengthy, arduous and very unpleasant process, requiring legislative knowledge; and practically, it is of little use given the very short window of time between allocation and acceptance of places, and the term start date in September.

- **OSA call for the DfE to issue Further Guidance**

On November 29, 2013, presenting the Annual report of the Chief Schools Adjudicator for England, Dr Elizabeth Passmore suggested, *“**the Department for Education should consider issuing guidance** for schools and local authorities so that there is fair access to schools for all children on reaching compulsory school age **so that children are not disadvantaged by any decision their parents make about the care of their children prior to compulsory school age** or by access to specific child care”. Dr Passmore also reported, “There has been considerable variety in the cases referred to us and a trend towards increasingly complex cases [and that] concerns about admission arrangements continue to make up the largest part of the OSA’s work and accounted for 162 of the total of 212 cases of all types referred to the OSA.”*

- **Lowering the Compulsory School Age in the Rose Review**

The 2009 Government-funded Rose Review said parents should be guided to enrol their children at age 4, but without lowering the statutory school age and without reducing choice, and yet this is precisely what has happened.

*“4.33 **Parents concerned**, for whatever reason, about how well their child will thrive in a school environment **will need clear guidance on the optimum conditions and the benefits to children of entering a reception class in**”*

September immediately after their fourth birthday. The option of parttime attendance should be available for children whose parents, with the advice of schools, believe this would ease entry to school. **It is important to be clear that this is not a recommendation to lower the statutory school starting age rather than give parents a greater choice,** and to achieve a better match of provision to need in the Reception Year.”

“Recommendation 14

(i) The preferred pattern of entry to reception classes should be the September immediately following a child’s fourth birthday. However, this should be subject to well informed discussion with parents, taking into account their views of a child’s maturity and readiness to enter reception class. Arrangements should be such as to make entry to reception class an exciting and enjoyable experience for all children, with opportunities for flexible arrangements such as a period of part-time attendance if judged appropriate.

(ii) The DCSF should provide information to parents and local authorities about the optimum conditions, flexibilities and benefits to children of entering reception class in the September immediately after their fourth birthday.”

4.26 Responses to the interim report confirmed that some parents would like their children to enter reception class in the September after their fifth birthday rather than entering Year 1. Others, as mentioned in the interim report, had wanted their children to enter a reception class in the September immediately after their fourth birthday, only to find that some schools would not let them enter until the following January or later.

4.27 Opinion was divided on the proposal in the interim report that the preferred approach should be for children to enter a reception class in the September immediately after their fourth birthday. **Some respondents questioned whether reception classes are the most appropriate place for 4-year-old children at all.** However, two important points need to be borne in mind. First, **the majority of children are already in school reception classes.** An analysis based on National Strategies data shows that 94 of 150 local authorities operate a single point of entry admission policy. Secondly, children of this age will be receiving EYFS provision regardless of the setting/school they are in. **So the debate is less about whether they should be there** than how to secure high-quality provision that is best suited to their development and what sort of flexibility should be built into the system to cater for the full range of children’s needs.”

There are a number of issues raised here. Firstly, the fact that opinion was divided regarding the most appropriate place for 4 year-olds further demonstrates the shared concerns of numerous education professionals with some summer born parents. Secondly, the rather crude concept of ‘majority rules’ as an argument against waiting until compulsory school age (i.e. everyone else’s child is starting school at age 4, so why not yours?) is autocratic and unreasonable. Absolutely, we need to debate “*whether they should be there*”, because no matter how “*high-quality*” the early years provision is in Reception class, this does not change the fact that some children will still benefit from being in a home and/or pre-school environment while they are 4, and that even those who might cope with their Reception year at age 4 could still flounder when they are exposed to a more academic Year 1 curriculum shortly after they turn 5.

Local authorities and schools often argue against a ‘*deferral*’ or ‘*delay*’ by insisting the needs of summer born children can be met through appropriate levels of support. Nevertheless, it is evident that there is a higher percentage of summer born children diagnosed (and often misdiagnosed) with Special Educational Needs

without a statement than autumn born children. The debate about where 4 year-olds should be is an important one, and it needs to focus on the medium and longer-term implications for many – not just the 12-month window that is the final year of EYFS provision.

*“4.29 **The move from the Reception Year to Year 1 often brings a shift in pedagogical style**, from the largely play-based philosophy of the EYFS to the more subject-oriented teaching associated with the National Curriculum. **Teachers report that those most at risk from this shift are summer-born children**, children who are described as ‘less able’, those with SEN and those for whom English is a second language.³¹”*

- **Maladministration**

When the Parliamentary Commissioner Bill was being debated in the House of Commons during the second reading in October 1966, The Lord President of the Council and Leader of the House (Mr Richard Crossman) stated:

*“A positive definition of maladministration is far more difficult to achieve. We might have made an attempt in this Clause to define, by catalogue, all of the qualities which make up maladministration, which might count for maladministration by a civil servant. It would be a wonderful exercise—**bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on**. It would be a long and interesting list.*

We have not tried to define injustice by using such terms as “loss or damage”. These may have legal overtones which could be held to exclude one thing which I am particularly anxious shall remain—the sense of outrage aroused by unfair or incompetent administration, even where the complainant has suffered no actual loss. We intend that the outraged citizen who persuades his Member to raise a problem shall have the right to an investigation, even where he has suffered no loss or damage in the legal sense of those terms, but is simply a good citizen who has nothing to lose and wishes to clear up a sense of outrage and indignation at what he believes to be a maladministration.” Available at: http://hansard.millbanksystems.com/commons/1966/oct/18/parliamentary-commissioner-bill#S5CV0734P0_19661018_HOC_260

The Bill was passed and the Parliamentary Commissioner Act 1967 (since amended) was born. The list of examples given by Mr Crossman became known as the ‘Crossman catalogue’:

- Bias;
- Neglect;
- Inattention;
- Delay;
- Incompetence;
- Inaptitude;
- Perversity;
- Turpitude; and
- Arbitrariness

The Parliamentary Ombudsman’s annual report in 1993, compiled by the then Parliamentary Commissioner William Reid, cited additional examples of maladministration:

- Rudeness;
- Unwillingness to treat the complainant as a person with rights;

- Refusal to answer reasonable questions;
- Neglecting to inform a complainant on request of his or her rights or entitlements;
- **Knowingly giving advice which is misleading or inadequate;**
- **Ignoring valid advice or overruling considerations which would produce an uncomfortable result for the 'over-ruler';**
- Offering no redress or manifestly disproportionate redress;
- Showing bias because of colour, sex, or any other grounds;
- Omission to notify those who thereby lost a right of appeal;
- **Refusal to inform adequately of the right of appeal;**
- **Faulty procedures;**
- **Failure by management to monitor compliance with adequate procedures;**
- **Cavalier disregard of guidance which is intended to be followed in the interest of equitable treatment of those who use a service;**
- Partiality; and
- Failure to mitigate the effects of rigid adherence to the letter of the law where this produces manifestly inequitable treatment

The formal title of Parliamentary Commissioner for Administration is rarely used today. In recent times the office of the Parliamentary Ombudsman has rebranded itself as the Parliamentary and Health Service Ombudsman (PHSO). The Parliamentary and Health Service Ombudsman (2007). *The Parliamentary Ombudsman: withstanding the test of time 4th Report Session 2006-2007 HC 421* [Online] Available at: http://www.ombudsman.org.uk/_data/assets/pdf_file/0004/3874/withstanding-the-test-of-time.pdf (Accessed: 14 December 2013)

As part of its remit, the PHSO can investigate complaints about government departments received from individuals; however, the complaints process of the department in question must be exhausted before a referral can be made to the PHSO, and the referral must be made via the individual's local MP (this is known as the 'MP filter') and there are time constraints in place.

The Local Government Ombudsman (LGO) for England and Wales was established by The Local Government Act 1974 (there is now a separate ombudsman for Wales). The main functions of the LGO are:

- to investigate complaints against councils and some other authorities;
- to investigate complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009); and
- to provide advice and guidance on good administrative practice

Again, the complaints process of the bodies being complained about needs to be exhausted before an individual can refer a complaint to the LGO, though they may in some circumstances deal with an urgent complaint before the complaints process has been exhausted; for example if it is about a school place for the next term.

The law says the LGO can investigate alleged or apparent '*maladministration*' or service failure, which can include:

- delay;
- incorrect action or failure to take any action;
- failure to follow procedures or the law;
- failure to provide information;

- inadequate record-keeping;
- failure to investigate;
- failure to reply;
- misleading or inaccurate statements;
- inadequate liaison;
- inadequate consultation; and
- broken promises

The PHSO and the LGO can instigate joint investigations into a complaint where the circumstances of a complaint are closely linked and fall within the remit of both Ombudsmen.

This report's contents, when read together with the examples of '*maladministration*' given above, would suggest that many admissions authorities are vulnerable to complaint from individuals, but **also the DfE itself**, given its handling of the summer born admissions problem and its reluctance to take the action that would have the greatest immediate effect – i.e. to amend the 2012 Code.

- **Shocking Allegations**

While compiling this report, the authors have been made aware of numerous shocking cases where a child's best interests and a parent's wishes have been overruled by chronological age policies and practices. Three examples worth noting are these:

- A parent alleges that when they spoke to their local admissions authority to request an age 5 Reception class start for their son who speaks no English, having only recently arrived in the country, they were told no; he must join his appropriate chronological age group in Year 1 this year. The parent alleges that in the course of the conversation, the local authority admissions employee suggested that noncompliance with a Year 1 start at age 5 during the 2013-2014 year could result in the family having to leave the UK.
- A mother alleges that when her summer born son inadvertently entered Reception class at age 5 (she applied as normal and his year of birth went unnoticed), he completed his foundation year but then in the first term of Year 1, when his year of birth *was* noticed, the head teacher declared that the boy was in the wrong year group for his age and that this was '*illegal*'. She was advised that he must move into Year 2 with immediate effect, and this is what transpired.
- A mother alleges that her local authority has informed her that if she waits to enrol her daughter in September 2015, when the child reaches compulsory school age, she would have to start in Year 1. Reception class would only be an option if the application is accompanied by a doctor or child psychologist's letter to confirm any special needs, developmental delay or other substantial reason for deferring. And crucially, if Reception class *is* then agreed, the child would need to skip a year later, and catch up before starting secondary school. When the mother asked if this process was statutory law, the response she received was that 'the local authority will enforce it.'

EXPERIENCES OF PARENTS

The words and comments below have been submitted for this report by parents of summer born children when asked to sum up their primary school admissions experience so far:

Frustrated - Angry - Determined - Injustice - Disempowerment - Helplessness - Moving the goalposts - Lack of clarity and transparency - Sinking in a sea of inconsistencies - Disappointing - Stressful - Unlevel playing field - Authority asserting their own criteria - Views and values discredited - Resistant to change - Frustration - Disempowering - Overwhelmed - Disgusted - Worried - Frustrated - Angry - Confusion - Entrenched behaviours - Different process – Discrimination – Abuse of Power – Legislation ignorance – Outraged – Incompetence

- **Stefan Richter**

"This process has been and continues to be the most stressful and emotionally draining experience of my life to date."

- **Jessica Fisher**

"Ultimately I expect that I will be forced to choose between early entry for my child at age 4 and 1 week or losing his Reception year altogether; both options leave me with an impossible choice in my eyes; a false choice... Parental choice and flexibility within the code is fallacy when it reaches local level. I'm fighting a losing battle - they've already made their decision about my child who they've never met."

- **Graeme Vousden**

"A surprisingly and disappointingly difficult process to get a Reception class start for my son at the right time in his life. The education admissions system seems often to be run by people who show little or no understanding of the issues of summer born and/or premature children, and little or no awareness of the flexibilities they can offer parents of those children."

- **Anna McLoughlin**

"Why give us the Hobson's choice of sending our daughter to school now at 4, against our wishes, or send her straight into Year 1, forcing her to miss a whole year of her schooling? Why insist on this unwritten policy when the official guidance supports parental choice? I can only conclude that the Admissions Authority want to do things the way they've always done them because... that's just the way they do things. I feel absolutely devastated by that. My daughter and I have been treated like we're just numbers. Faceless clones that need to be processed according to the instructions. My daughter is not a number. She is a human. She is everything to me. A little flexibility around when she starts school doesn't inconvenience anyone else but forcing her to start too soon could really harm her (and the evidence supports that). I can't risk that and in the name of her best interests they shouldn't be risking it either. Especially for the sake of their precious processes. Please, put people before processes?"

- **Joanne Brooks**

"After nearly a year of discussions I have still not reached the end of my journey with my simple request that I wish my son to start his education in Reception at compulsory school age. The whole experience so far seems nothing less than a complete waste of time, energy and money for everyone involved. Our school is happy to accommodate my request and there is nothing in law to prevent this but for some reason I have been blocked and bullied all the way by the LEA. However, I am now being supported by my MP and am dealing at director level at the LEA so I expect common sense will soon prevail. The experience so far has been a rolling nightmare

and certainly not for the faint-hearted. But I know this is the right decision for my child and I will continue to do everything in my power to make this a reality for him."

- **Julie Thompson**

"My experience was long, complicated and frustrating, no-one really seemed to know what was and wasn't allowed and more effort was put into stopping us rather than giving us much needed information."

- **Rozana Dutton**

"As a mum of a summer born (late August) baby, I've always felt the September after her 4th birthday would be too much too soon. She's only 4?! If she was born 16 days later she would have had another whole year to enjoy being a child, learning through play, without the pressures of school life; a whole year to grow and develop emotionally. I did my research, made my decision and contacted the local authority but it said if I defer for a year, my little girl would have to start in Year 1. This to me completely defeats the object of deferring and would mean my little girl would miss out on a vital school year, Reception – a gradual, gentle introduction to school. I just want my summer born baby and all summer born babies to be given the chance to flourish and thrive, not just 'cope'. My case will now be put forward to the schools admission team and we await our fate. I am confident and have the courage to stand up for this and will continue to fight for the cause. However, not every parent will have this confidence or knowledge when they approach their school admissions team and many parents will be backed into a corner."

- **Anonymous 1**

"I have felt blocked at every turn with my council. They have admitted after seeking legal advice that what I am asking is permissible in the admissions code and under the new guidance yet doggedly stuck to their old policies in blatant ignorance of it all."

- **Anonymous 2**

"My experience suggests that the LEA's main concern is ensuring that all children are in their default year group and what the parent thinks is best for their child is largely irrelevant. I would say the whole process has been frustrating and would challenge the will of all but the most determined parents."

- **Anonymous 3**

"We had to cautiously approach an LEA and a school, who we knew were totally against the notion of delaying a child's entry. We discovered the legislation was on our side, but pulling it all together was like preparing for battle. The Admissions team told us that there is no legal reason why a summer born child could not delay entry, until they become statutory school age. Then [Child] can start school in Reception (not Year 1 as their admissions policy states). We are still unsure exactly how we go about applying a year late. We know the LEA says it is still against their policy, even though the law is on our side. We don't understand why there is such objection to a delay, when it can only be in the child's best interests."

- **Anonymous 4**

"Parents that are requesting a delayed start are doing it in the interests of their children whereas LEAs seem to have their own agenda for refusing requests. Anyone would think that parents are asking for something illegal with the standpoints these LEAs are taking."

ADMISSIONS HISTORY

This section presents the authors' understanding of how England arrived at a situation whereby **early admission** of children to primary schools **at age 4 is the expected norm**, while **admission at compulsory school age is heavily discouraged and ultimately penalized for summer born children**:

1950s

As early as the late 1950's, when there was a lack of nursery provision and a growing demand for pre-school places, some local authorities began to admit children to Reception class to make use of the resources available in schools that had available space and staff.

1960s

In 1967, The Plowden Report (*Children and their Primary Schools. A Report of the Central Advisory Council for Education (England) London*) recommended that **"the statutory time by which children must go to school should be defined as the September term following their fifth birthday"** and said this measure would require legislation. It also said, **"Attendance at a nursery group should be permitted for the first term of compulsory education. A child should, if his parents wish, be allowed to attend school for a half day only until he reaches the age of six. Some children would be nearly six before they went to school; some no older than at present. The median age would be five years six months. This modest raising of the age of entry for some children by a few months would, we think, have several beneficial effects..."**

"Chronological age, which can be a misleading guide to a young child's development, decides when he can and when he must go to school. Some of the teachers who gave evidence would have liked to substitute 'developmental age' but for the reasons given in Chapter 2 it would not be easy to assess this accurately even with tests of the same complexity, expense and unpopularity as those which have been used in transfer to secondary education. It would seem wise, therefore, to continue to relate entry to school to chronological age. The law should, however, allow a good deal of variation in practice."

1970s

In the early 1970's there was concern that many Reception classes were admitting children below the age of 5 and that those children were not experiencing a nursery education, but rather a Reception education.

In 1973, Edward Heath was Prime Minister and the then Education Secretary Margaret Thatcher, under pressure from the National Union of Teachers and education authorities, made it permissible to admit children into Reception at the beginning of the year in which they were five. Though Margaret Thatcher felt that it would be better for children below the age of 5 to experience a nursery education, there wasn't the provision available and she stated, **"It is better for children to be in school than not there-at all, for them to be where their parents wished them to be. Many parents prefer their children, before the age of five, to go to school part-time, but there will be some provision for full-time education."**

In 1977, Sir George Young (Ealing, Acton), stated, **"...Nursery schools and nursery classes are the responsibility of the Department of Education and Science. Day nurseries, child minders and pre-school playgroups are the responsibility of the Department of Health and Social Security. One therefore has two Departments which are**

responsible, one concerned with "educating", and the other concerned with "caring". We have somehow managed to institutionalise a totally illogical split in our approach to the under-fives..." Sir George Young also commented on the importance of parental involvement during a child's early years, saying, "A society that places a higher value on the work that a mother might do if she sought employment, instead of staying at home to build up this relationship with her child in his most vulnerable years, is a society that has its values sadly wrong. Looking after children, from society's point of view as well as the child's is a far more important job than going to work."

He continued, "I believe that with the exception of the pre-school playgroup movement, the contribution that the parent can make to the pre-school child's development and progress is inadequately recognised, and that as a result parents are becoming progressively demoralised and frightened as the professionals take over. We are not, therefore, using properly one of this country's finest resources, namely, the talents and affection of the parents..."

"My anxiety is that, while it is clear that an incentive should be given to the mother not to go out to work if she does not want to, the Government have been silent on this. They seem to favour the most expensive sort of provision when there is clear evidence that it is not the best. In the voluntary movement, including neighbourhood groups, community groups and the mothers themselves, a little money can do a lot. Is the Government concerned about people helping themselves, or are they more concerned about the State running all?"

- Today of course, provision for both caring and education comes under the remit of the Department for Education; however discrepancies still exist and current practices deny many 4 year-olds an early education in an appropriate setting, operating age-relevant ratios. Notably, 4 year-olds in a Reception class are subject to Infant Class Size ratios, whereas much lower ratios apply to 4 year-olds that attend a pre-school setting or remain at home for example.

In 1979, Miss Margaret Jackson (Department of Education and Science) advised that "About 17 per cent. of 3 and 4-year-olds are now in nursery schools and classes, and another 36 per cent of 4-year-olds are in primary schools early". She said, "There has already been a relaxation of guidelines on the admission of rising fives. As with many other things in this field, this is a matter for the local authority. However, falling numbers of births will soon solve that problem anyway."

She also said, "While the Government hope to provide resources for a modest increase in nursery education provision, their present policy is that the total number of under-fives in education should remain constant. Local education authorities have therefore been advised that in general **no more under-fives should be admitted to primary schools except for rising fives** where the call on resources is minimal."

- Rising fives were considered to be children who were closer to age 5 than they were to age 4, and yet the practice of admitting young 4 year olds continued, and indeed grew to a point where most children are now entering school at just turned 4 instead.

1980s

Circa 1980, local authorities continued admitting children below age 5 into Reception classes, in order to fill the surplus of places that had resulted from a drop in the birth rate. Dr. Boyson, Under-Secretary of State advised, *“The Government’s policy is to encourage local authorities to admit rising fives to reception classes in primary schools and other under-fives to nursery schools and nursery classes in primary schools whenever resources permit.”*

When Mr. Jim Callaghan asked the Secretary of State for Education and Science, *“what recent changes he has made in his plans to extend educational facilities to children under the age of 5 year”*, Dr Boyson replied, *“None. The Government’s expenditure plans 1980–81 to 1983–84 provide for expenditure on under-fives to fall to about 5 per cent. below the current level. The Government hope that local education authorities will be able to achieve these savings without curtailing their provision of nursery education, mainly by restricting the admission of younger, 4-year-olds to reception classes in primary schools.”*

In 1982 Mr Bob Dunn, Parliamentary Under-Secretary of State said, *“18 per cent. of 3 and 4-year-olds were in primary school reception classes, and 22 per cent. were in nursery schools of nursery classes attached to primary schools;..”*

In 1984 Sir Alan Haselhurst stated, *“I am worried that in some local education authority areas it is not possible universally to admit rising-fives. **That means that summer-born children are put at some disadvantage.** I do not know to what extent that disadvantage has been assessed, but there is strong feeling in the teaching profession that such children suffer from missing a vital period of education. **I hope that we shall not sweep that problem aside. I am sure that it is right to get our children into school at the earliest appropriate moment.**”*

- The concern for summer born children at this point was different to today, and changes to admissions legislation eventually helped; i.e. parents of summer born children who had to wait until they were ‘rising five’ before trying to access a Reception class place could often find that there were no more places available – they had been filled by children of an older age.

Also, by 1984 it becomes apparent that summer born children not starting school until compulsory school age are forced to join Year 1 rather than Reception class. Dr. McDonald asked: *“Is the Minister aware that **a small number of local authorities discriminate sharply against summer-born children, who receive only six terms of infant school education instead of a full three years? What action will the Government take to end such blatant discrimination against children who apparently have the misfortune to be born in the summer, so that they have a chance of decent infant education?**”* Mr. Dunn : *“As a summer-born child, I have sympathy with what the hon. Lady says, but **these are matters for local education authorities.**”*

- Evidently, almost thirty years on, this practice has continued, and the Department for Education is still granting power to local authorities despite complaints from parents – but worse than that, despite interim Acts of Parliament and EU legislation that should have helped to resolve this discrimination.

In 1986, then Prime Minister Margaret Thatcher advised, *“It is for local education authorities to determine the scale and nature of the provision in their area for those below compulsory school age, in the light of local needs and priorities and the availability of resources. ...**Overall, some 80 per cent. of children are in school before they***

are five; excluding "rising fives", 22 per cent. of 3 and 4-year-olds now attend maintained nursery classes or nursery schools and 21 per cent. attend primary reception classes; and a significant contribution to pre-school experience is also made by playgroups, which are attended by some 40 per cent. of 3 and 4-year olds."

In 1988, the DfE view of localism was reiterated when Mr. Boateng expressed concerns about staff ratios for children entering school early: "To ask the Secretary of State for Education and Science **what action he intends to take to ensure that nursery classes in primary schools are staffed as nursery and not as reception classes.**" Mr. Dunn: "**None.** Levels of staffing in schools are for determination by local education authorities and schools."

The Deputy Speaker of the time also noted the disparity in ratios: "Rising fives— 'Where pupils are admitted to infant or primary schools before the statutory school starting age, they shall be taught in classes staffed at least by a qualified teacher and a qualified nursery nurse if such classes contain more than 12 pupils.'" But Mr. Dunn again made clear that 'rising-five' was still a matter for localism, "Government policy since 1980 has been and remains, first, to preserve the discretionary basis on which education for the under-fives is provided by local authorities; secondly, to maintain level funding of this sector in real terms; and thirdly, **to encourage local flexibility and diversity and maximum consumer choice.**"

- 'Maximum consumer choice', might now be described as 'Parental Preference', but it was a false choice then and it is still a false choice now.

In June 1988 Mr Dunn advised, "The admission of under-fives to reception classes is at the discretion of local education authorities. It is important that the provision for those pupils should be appropriately and adequately resourced. The Government are aware that the presence of significant numbers of four-year-olds can give rise to problems in some areas and, through the agency of Her Majesty's inspectors, **we are closely monitoring the situation...**"

- This phrase was echoed in September 2013 by Under-Secretary of State Elizabeth Truss, when she said the DfE "**is monitoring this [summer born admissions] issue.** As a Department, we will also be monitoring any complaints made by parents..." Given that almost one year had passed since the DfE was first made aware of serious problems, this report's authors consider 'monitoring' as a very reactive position to take up, instead of the proactive position that is surely required.

In 1989 Mr. Raison, MP for Aylesbury, and former Parliamentary Under-Secretary of State, noted "....there is concern about the teaching of children aged four in primary school reception classes. I do not say that it is all bad or that teachers do not know what they are doing—it would be ridiculous to adopt that position. Nevertheless, there is anxiety about the extent to which teachers are trained or experienced in handling children of that age group as opposed to the higher age group. Sometimes there is anxiety about the child-staff ratio. Children who are just four require a ratio of 1:13, but often they do not find that in reception classes..... The special problem is that parents are often so anxious that their children should—as they see it—get on with the three Rs that they want them to start at the earliest possible opportunity..... Sometimes, there has been a doctrinaire resistance to allowing three and four-year-olds to read at all. That is, obviously, ridiculous, but **we do not want to rain into children of three and four knowledge and skills that are more appropriately picked up at five, six or seven. There is agreement about that in the educational world.** One must occasionally be firm with parents although, in general, we respect the parents' importance generally in these matters...."

1990s

In 1993 Lord Judd noted, “Research has shown that reception staff sometimes have lower expectations of the ability of four year-olds than staff working in nursery schools and classes.....It is clear from those reports that little consideration has been given to the needs of four year-olds when early admission policies have been implemented.” The MP for Bath, Mr. Foster noted, “**The evidence is now clear, and certainly growing, that nursery education for three and four-year-olds is far preferable to the early introduction of rising-fives into reception classes**” and Ms Armstrong MP for Durham North West noted, “There is a difference between nursery education and reception classes, and the Government will have to address it.”

In January 1995, Baroness David advised “From September 1996, all autumn-born children will start school in September of the academic year in which they are five, but spring and summer-born children will start in January.”

And then - circa 1996 – nursery vouchers were issued, which led to local authorities admitting even more children under the age of 5, partly to fill up surplus places, but likely also to do with the income stream this provided. Many local authorities much preferred the funds from the nursery vouchers to end up in their schools rather than in the hands of private pre-school providers.

In January 1996 Mr. Spearing MP for Newham South stated, “The term “early-years” covers the lot, but we know what nursery education is in terms of the curriculum, which is known and understood throughout the country, the training and the premises. It is different from playgroups, some of which are very good and some not so good. It is also different, by definition, from **reception classes in infants schools**, because they **are part of the statutory system for the over-fives**. The Minister knows of the terrible administrative problems. Because of the administrative mess-up, parents will have to give up these coloured bits of paper for children who are going to be in the reception classes of infant schools. We do not have a plan for nursery education, although all the reports of the debate will use that term. I therefore charge the Government with being misleading and I cannot absolve them from attempting to do that deliberately.”

In June 1996, during a debate in the House of Lords of a Nursery Education and Grant-Maintained Schools Bill, Lord Addington noted that, “**There is quite clear educational evidence that those children who are designated as summer-born children perform right through to the age of 16 at a lower level of attainment than other children in the same year. It is equally true that the child who is barely four when it enters a reception class has very different educational needs from a child who has reached statutory school age.**”

And in July 1996, debating the same bill, The Lord Bishop of Ripon stated, “...Many people do not realise how much of the voucher scheme will be happening in reception classes. **For some time now the age of admission to a reception class has been reducing and many of the nation's four year-olds are placed in reception classes long before their fifth birthday. Because of this gradual change in the age of admission to reception classes, many people have lost sight of the fact that statutory education does not start until the beginning of the term after the child's fifth birthday. That means that if an authority moved to admitting all children to reception classes at the beginning of the year in which they became five, one-third of the children (the summer-born children) would spend all three terms of their voucher-bearing career in the reception class; one-third (the spring-born children) would spend two out of three terms of their voucher-bearing career in the reception class;**

and one third (the autumn-born children) would spend one out of three terms of their voucher-bearing career in the reception class. If that pattern became widespread, the majority of vouchers would be redeemed for the education of four year-olds in reception classes..... **There are incentives for LEAs and schools to admit more four year-olds to reception classes.**

“Local education authorities will have money deducted from their standard spending assessment to fund the voucher scheme. They can be more confident of retrieving that money if they admit four year-olds a bit younger and collect a few extra vouchers. **For most primary schools there will also be significant incentives to increase the number of four year-olds in their reception class.** That may be achieved by admitting four year-olds earlier or by simply admitting more.....in theory there may be a choice for parents, in practice there may not be, particularly in rural areas. There is insufficient provision to provide choice for parents until there are spare places in the system. It is estimated that an excess of 10 per cent. of places is needed to allow for choice, whereas there is quite the opposite: **there is currently a shortage of places for four year-olds. Parents are anxious to secure a place for their child in the school of their choice, and admission to a reception class will secure a place in the school later.....It remains a concern that parents will be pressurised into taking a reception class place which will secure their child's place in that school for the remainder of his or her primary school career.** ...As I have said, there is already a trend towards younger admission in the reception year. The same Pre-School Learning Alliance report records planned changes to admissions policies in a significant number of schools in Norfolk so that they can admit younger children into the reception class.”

- Early admission to Reception class evolved at least partly because of a lack of nursery provision and local authority funding incentives.

In July 1996, Lord Henley stated, “...The nature of reception classes makes them different from nursery classes. Reception classes are to all intents and purposes, though not in law, the start of the compulsory years of education. Reception classes tend to include children aged four and five, or even four, five and six”.

This changed in 1998, when a legal meaning of Reception class was defined within the School Standards and Framework Act, **“reception class” means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate with pupils of that age**”. Ironically, given the premise of this 2014 report, the 2012 Code went even further and defined Reception class as an “entry class to primary school”; but the problem now is the interpretation of which age it is appropriate for of course.

In March 1997 during a debate of an Education Bill, Baroness Farrington of Ribbleton said, “I learnt about this subject because **one of my children was born on 31st August.** I should also tell the Minister that, **if I could have my life over again, I think that I would have lied and said that he was born on 1st September.** However, when the Minister considers the implications involved, I would ask him to ignore the red herring as to whether or not a child would have to wait a year. The issue is to look at when children join the year with which they will go through their school lives. Therefore, one looks at when a child would be in that particular year. When one has identified the year cohort, one then seeks to ensure that none of the children in that year is denied the one or two terms that his or her fellow age group receives. Then one considers the appropriate resource and the appropriate provision. Virtually all schools, except the smallest village schools, are divided by year group, so if a group of rising fives is entering school they will all be in the same year in the end.”

- To repeat, **“The issue is to look at when children join the year with which they will go through their school lives.”** This statement is extremely relevant in 2014. Admission authorities play on parents fears that if they do ‘delay’ their child’s entry to Reception class by one year, then at some point in time, their summer born child will have to ‘catch up’ and most likely skip a year, particularly when transferring to the secondary phase of their education.
- This practice of early admission continued for such a considerable time that parents accepted it as the norm and even teachers thought that anything else was exceptional. Furthermore, the line between ‘nursery provision’ and ‘school’ became so blurred that by the time we get to the School Standards and Framework Bill being discussed in June 1998, even those involved were debating the distinction between the two.

Baroness Blatch: “... We move on to some important aspects of the Bill relating to nursery education. I believe that nursery education means full-time or part-time education not that is "suitable for" but is "appropriate to the developmental stage of children who have not attained compulsory school age. I have tabled the amendment largely to draw the attention of the Committee to the fact that at all stages of education, particularly at pre-school age, the stage of development will differ. **There are many examples of children being inappropriately placed either in a large infant class or in a reception class...**”

Baroness Blackstone: “I should remind the noble Baroness, however, that **it was the nursery education voucher scheme which led to an unfortunate and uncontrolled increase in the number of children admitted to reception classes as both schools and LEAs tried to maximise their income from vouchers.** But we are trying to stop this. We have already made it clear to LEAs in our guidance on drawing up early years development plans that we did not expect plans to provide a free place for all four year-olds simply by expanding reception classes....

Parents who want to do what is best for their child and exercise their preference, in most cases to leave their children in the settled, secure environment of a specialist nursery class, are being told that if they do not send their children to a reception class in their preferred primary school they may not get a place at five; or, alternatively, that if they move their four year-old they will be guaranteed a place in the primary school.

.....parents have no clear power in law to resist this insidious form of blackmail. The amendment would declare with utter clarity that such practices were wrong. It might also give parents grounds to pursue in the courts schools or councils that behaved in this way....

...information provided to parents must be without bias to any one sector and should also make it clear that children are not legally required to attend primary school until they are of compulsory school age. This message will be strengthened in next year's guidance.

... No admission authority for a maintained school can require parents to send their child to a school before the child has become of compulsory school age. Even where a school does admit before compulsory school age parents may apply for a place starting from when their child reaches compulsory school age. But where a school is popular and oversubscribed a place may no longer be available. Where schools are very popular and competition for places is high I am sure that no one will deny—least of all the noble Baroness, Lady Blatch—that a very popular school that operates an early admission policy should inform interested parents of the popularity

of the school. Parents should know that places might not be available at the school of their choice if they choose not to apply for a place until their child is of compulsory school age. Not to do this would deny parents the opportunity to make informed decisions. But there is a key difference between informing parents and "blackmailing" or "threatening" them. The latter are clearly unacceptable.

However, some authorities have adopted a practice of agreeing parental requests to defer entry to a primary reception class until a child reaches compulsory school age. My department will be drawing the attention of school admission authorities to this in the interim guidance on arrangements for school admissions which will be issued for consultation shortly. Where this practice is adopted, parents apply for a place at the normal time of admission but in effect the place would be held for the child until he or she is older, up to compulsory school age."

....But we have no plans to require admission authorities to allow deferred entry".

- Nevertheless, deferred entry did indeed make it into School Admissions Codes, though not without fault and not without ambiguity.

In June 1998, in the House of Lords debating the SSFA 1998, Baroness Byford said, "...**the new intake of the reception classes is a very recent development and has implications for the other varieties of provision. This did not happen 18 years ago; it evolved only recently. The ratio equation is of immense importance because it affects those who provide private nursery places. They are in competition with maintained primary schools. While I am not making a political point, I wish to stress that this problem is accentuated now because more parents realise that there is a place for children in reception classes at primary schools which was not there before. This is having a direct effect, and a very immediate direct effect, on the other providers.**"

Baroness Blatch then moved for Amendment No. 241BB: After Clause 111, to insert the following new clause:

"Maintained and Voluntary Aided Schools: Admissions Policy.

A local education authority shall— (a) ensure that no maintained school or voluntary aided school within its area requires children to enter school under compulsory school age as a condition, or implied condition, of admission to the said school at the age of five; and (b) ensure that, with respect to the admissions policy of any maintained school or voluntary aided school in its area, entry into the said school's reception class or classes in the term following a child's fourth birthday shall not confer any preference or advantage over other children in the same or neighbouring local authority area who may seek entry into that school at the age of five."

- Ultimately, this clause was not included in the 1998 SSFA but it is interesting to note its suggestion since it is extremely relevant to the summer born admissions issue.

Very little changed in those intervening years, and it would appear that the words spoken in 1978 in the House of Commons by Mr Hamish, then MP for Banffshire, are only too true: *"It may be that I was born impatient or that I grew up impatient, but the snail's pace of this place and of Westminster thinking nearly drives me crazy. I continually tell the people of Scotland that even **if Westminster agrees with a Member it takes 15 months to get anything done. If Westminster does not agree with him, it takes three years to get the message across**".*

- Getting the message about summer born children across has evidently taken considerably longer than three years, but if the DfE wholly supports the position outlined by Parliamentary Under Secretary for

Education Elizabeth Truss in September 2013, parents shouldn't have to wait anywhere near 15 months to see something done about it. It will be too late for too many children by then.

2000s

In the report authors' view, this is the decade where efforts to make things fairer for children entering Reception classes *early*, at age 4, actually resulted in the current situation where 5-year-old summer born children trying to enter Reception class *at* compulsory school age became referred to as *delaying* their school start and only being permitted if their parents can demonstrate *exceptional* reasons.

Charles Clark MP's 2003 School Admissions Code was notably the most detailed, outlining 'Deferred entry to primary schools' as:

*"3.19 Where the admission authority for a primary school offers places in reception classes to parents before their children are of compulsory school age, the Secretary of State expects the admission authority to offer the parents the option of deferring their child's entry until later in the school year. The effect is that the place is held for that child and is not available to be offered to another child. The parent would not however be able to defer entry beyond the beginning of the term after the child's fifth birthday, **nor beyond the academic year for which admission is sought**. This should be made clear in the admission arrangements for the school."*

- Notice the reference highlighted above; this infers that there is another academic year for which admission to Reception class may be sought, which is of course true in the case of summer born children. It's a subtle, but very important difference – if you look again at 2.16 of the 2012 Code (p.9).

In May 2000, written evidence – provided by way of a further memorandum (EY74) from *The National Early Years Network* to the Select Committee on Education and Employment – was published by the House of Commons. It said, "*Regardless of the professional perspective from which they are provided, **the most vociferous criticism is reserved for the policies responsible for four year olds entering reception classes, especially summer-born ones**. Current practice denies many four year olds their entitlement to early education delivered by appropriately trained staff in suitable premises which operate relevant ratios."*

Later, in a Commons Debate on Reception classes in May 2002, Dr Julian Lewis sought "*To ask the Secretary of State for Education and Skills **what guidelines she issues on ensuring that parents do not come under inappropriate pressure to enrol their children in reception classes before they are ready**.*"

Mr Timms replied, "*The code of practice on school admissions says that admission authorities can offer places in reception classes to parents before their children are of compulsory school age (e.g. five), but also that parents accepting the offer can ask to defer their child's entry until he or she is of compulsory school age, provided the place is taken up within the same academic year.*"

- Unfortunately, the answer here focused solely on deferral within the first academic year a summer born child can enter school, and not the second possibility. It still remains an important question however, more than ten years later.

The 2003 Code also legislated for '*Admission numbers*', and this is where primary legislation as it relates to compulsory school age, Reception class entry and relevant age group appears to have been allowed to be

forgotten and/or misinterpreted. The extracts below demonstrate how administrative processes, most likely reported and funded annually, led to 12 month chronological cohorts becoming the norm – and to be diverted from only in exceptional circumstances:

*“A.45 **A school must have an admission number for each “relevant age group”.** A relevant age group is defined in law as “an age group in which pupils are or will normally be admitted to the school in question”.*

*A.46 ... **Pupils should not be admitted above the published number unless exceptional circumstances apply.***

A.53 The law does not require a child to start school until the start of the term following the child’s fifth birthday. The date compulsory school age is reached is determined by dates set by the Secretary of State for the Autumn, Spring and Summer terms. These are 31 August, 31 December and 31 March.”

Given the authors of this report’s interpretation of 3.19 of the 2003 Code above (that there is another academic year for which admission to Reception class may be sought), it’s worth noting that the information for ‘Admission outside the normal age group’ appears in a separate part of the 2003 Code, and is certainly not juxtaposed with arrangements for deferred entry to Reception class, as it is in the 2012 Code. Again, a small and subtle difference, but one that has proved to have very large repercussions, especially the fact that the 2003 Code’s right of appeal is now denied for these parents in the Coalition’s 2012 Code:

*“7.25 Although most children will be admitted to a school within their own age group, from time to time parents seek places outside their normal age group for gifted and talented children, or those who have experienced problems or missed part of a year, for example due to ill health. Admission authorities should consider these requests carefully and make decisions on the basis of the circumstances of each case. **Parents refused an application for a place outside the normal age group have a statutory right of appeal.**”*

The 2003 Code also contained a very helpful ‘Annex A: School Admissions: The Law’, which included ‘Taking account of parental preference’, *“A.25 **LEAs have a general statutory duty, in relation to admissions as well as other matters, to have regard to the principle that pupils are to be educated in accordance with the wishes of their parents insofar as that would be compatible with the provision of efficient education and training and the avoidance of unreasonable public expenditure.** They have a specific duty, under section 86(1) of the 1998 Act, to make arrangements for enabling the parents of children in their area to express a preference or preferences as to the school at which they would wish their child to be educated and to give reasons for that preference/those preferences. **Where a parent expresses a statutory preference, section 86(2), as amended by paragraph 3 of Schedule 4 to the Education Act 2002, puts a specific duty on LEAs and governing bodies to comply with that preference,** subject to the reliefs set out in section 86(3) as amended – see paragraph A.29.”* Furthermore, *“A.26 The 1997 Rotherham judgment clarified that, when allocating school places, **LEAs must carry out their duty to meet expressed parental preferences before operating any other local allocation policy...**”*

Paragraph A.29 reads, *“Where co-ordinated admission arrangements are in place, the duty under section 86(2) to comply with parental preference does not apply where:*

- ***to admit the child would ‘prejudice the provision of efficient education or the efficient use of resources’;***

- *the school is wholly selective by high ability or by aptitude, and the admission of the pupil would not be compatible with such selection under the admission arrangements;*
 - *the child has been permanently excluded from two or more schools and at least one of the exclusions took place after 1 September 1997. The requirement to comply with parental preference is disapplied for a period of two years following the second exclusion. However, this does not apply if one of those exclusions took place before the child reached compulsory school age, or where the pupil was reinstated following exclusion, or if following an exclusion, on review by the governing body or on appeal, it was decided that it would have been appropriate to reinstate the pupil although it was not considered practical in the circumstances to do so. A permanent exclusion is regarded as taking effect from the first school day the head teacher has told the pupil not to attend school;*
 - ***where another place has been offered, as identified under co-ordinated admission arrangements; or***
 - ***where to admit would be incompatible with the duty to meet infant class size limits, because the admission would require measures to be taken to comply with those limits which would cause prejudice to efficient education or the efficient use of resources.”***
- It is this report’s authors’ understanding that the three reasons highlighted above may have been (and continue to be) used by admission authorities to argue against 5 year-old summer born children accessing a full 7 years of primary school education starting in Reception class, and it is possible that a legal judgement is needed to clarify the law on this.

Especially since paragraph A.30 reads: *“LEAs and the governing bodies of maintained schools may not refuse to admit children to any relevant age group – a year group in which pupils are normally admitted to the school – on the grounds that admission would prejudice the provision of efficient education or the efficient use of resources, unless the number of preferences or applications for places in that relevant age group exceeds the school’s published admission number.”*

And A.31 reads, *“The restriction in paragraph A.30 does not apply to preferences or application for admission in years when pupils are not normally admitted to a school, but such applications must nonetheless be accepted unless any of the circumstances outlined in A.29 apply. As in other cases of refusal, where parents are unsuccessful in applying for a school place for their child for these years, they must be given reasons and informed of their right to an independent appeal against this decision.”*

- Once *“relevant age group”* in the context of admission number (PANs) fused into *‘chronological age group’* or *‘chronological cohort’* in the context of admissions in general, it is easy to see why summer born children applying for a Reception class at age 5 came to be considered a *‘problem’* for admissions processes – only to be allowed in *‘exceptional circumstances’*.

A final paragraph worth noting here is A.54, *“Prior to the start of compulsory education, every child is entitled to receive free education from the beginning of the term following their fourth birthday in a setting of the parent’s choice. Parents may choose a place in a private, voluntary or maintained school setting, provided it is funded as part of the LEA’s Early Years Development Plan. The Government has set a target to extend the entitlement to free education to all three year olds from September 2004.”*

- It is our understanding of this provision that it was therefore **not** expected by the Government in 2003 for *all* summer born children to be in school, in Reception class, at the beginning of the term following their 4th birthday (though most were), and yet of course this is precisely what happens now. It is extremely likely that the extension of pre-school provision to 3 year-olds is what has cemented the shift towards summer born children entering school one year earlier than they have to – and one year earlier than many of their parents want them to.

Interestingly, in the same year, delegates at the 2003 Association of Teachers and Lecturers’ annual conference said that children, especially boys, became disruptive when starting maths and English lessons at too young an age. The boys were not ready to accept regimented lessons at four and delegates called for the formal school starting age to be put back to six, as it is in most European countries. Calls such as these continue to go unheeded by Government, but what’s essential to understand in any debate about school age – and this is particularly important for any international readers of this report – is that **despite England’s global ranking as an age 5 school start, this has effectively been reduced to age 4 without any change to primary legislation.**

On July 22, 2004, the Select Committee on Education and Skills Fourth Report contained this definition of ‘*The status of the Codes*’: “*The Codes of Practice provide guidance to admissions authorities and to agencies responsible for the conduct of appeals. They contain descriptions of the primary legislation from which they stem but are clear about their limitations. **The Codes "signpost the relevant legal provisions but they do not aim to provide definitive guidance on the interpretation of the law: that is a matter for the courts."*** (School Admissions Appeals Code of Practice, para 2.1, see also School Admissions Code of Practice, Department for Education and Skills, 2003, para A1.)

In 2007, Education Secretary Alan Johnson declared that his Code would have “*a stronger statutory basis than its predecessors. All admission authorities are required to act in accordance with its mandatory provisions (whereas they had only to have regard to earlier versions).*”

The 2007 Code included the same definition of compulsory school age as in 2003, but there were differences for the ‘*Admission of children below compulsory school age*’, and an understanding that not all children would be starting early:

“2.60 *When determining the arrangements for primary schools that admit children below compulsory school age, the admission authority must make it clear that:*

- a) ***the arrangements do not apply to those being admitted for nursery education including nursery provision delivered in a co-located children’s centre;***
- b) *parents of children who are admitted for nursery education will still need to apply for a place at the school if they want their child to transfer to the reception class;*
- c) *attendance at the nursery or co-located children’s centre does not guarantee admission to the school; and*
- d) *parents can request that the date their child is admitted to the school is deferred until later in the school year or until the child reaches compulsory school age in that school year.”*

- Importantly, the 2007 arrangements for ‘Deferred entry to primary schools’ **do not prescribe a Year 1 entry** or application for summer born children starting school at age 5; however the Code does say, “they will have to reapply during the appropriate admissions round”, which may have been open to interpretation regarding year group of entry.

*“2.64 Where admission authorities for primary schools offer places in reception classes to parents before their children are of compulsory school age, they should offer the parents the option of deferring their child’s entry until later in the same school year. The effect is that the place is held for that child and is not available to be offered to another child. The parent would not however be able to defer entry beyond the beginning of the term after the child’s fifth birthday, nor beyond the academic year for which the original application was accepted. **If they want to defer their child’s admission to a later academic year, they will have to reapply during the appropriate admissions round. This must be made clear in the admission arrangements for the school.**”*

- Finally, it is also interesting to note that the 2007 Code included the term “Rising Fives” in its glossary, which says: “The term rising fives usually relates to children who are still age four at the start of a school year but will reach age 5 before the year is over.” Given that the school year usually ends during the month of July, and therefore any child with a birthday after that will not even have reached the age of 5, it’s clear to see how summer born children were not being properly legislated for in 2007, and how it became assumed that they would be ‘in school’ regardless of some of them never reaching age 5 during their Reception year.

This fact is also important to remember when reading recent headlines about the poor performance of summer born children in their EYFS ‘age 5’ profiles. These profiles are carried out during the summer term, to be submitted no later than June 30, and so for a large number of children (and certainly those born in July and August), they are being assessed against age 5 criteria when they are still only 4 years old. This is not ‘parents not preparing their children for school’ but rather, **some children being forced to start school early and then being assessed before they’ve even reached the age of assessment.**

In 2009, the DfCS&F published “Your child, your schools, our future: building a 21st century schools system - The Parent Guarantee” (archived), which promised, “**Parents can already: have confidence that the Admissions Code will ensure that there is a fair process in place to allocate a school place to their child;**”.

And Secretary of State for Children Schools and Families Ed Balls’ 2009 Code stated under ‘Applications and application forms’: “**1.77 It is important that when applying for a school place parents only have to go to one place and are easily able to find any information they need to assist their application.**”

However, and this has proved deleterious for summer born children – both the 2009 and the 2010 Codes (the latter also from Mr Balls) contained **incomplete and therefore inaccurate definitions of Reception class**, which very likely exacerbated the already pervasive idea that all children should be in school, in Reception class, at the age of 4 – and certainly by the time they’ve turned 5. This is the definition provided (inaccuracy highlighted):

*“Defined by section 142 of the SSFA 1998. An entry class to primary schools for children who are aged 5 **during the school year** and for children who are **younger than 5** who it is expedient to educate with them.”*

- This example demonstrates how easily a government's presentation of primary legislation can have very serious repercussions for many children, and their parents. The 2009 and 2010 Codes effectively established a statutory position that Reception class entry was now **only for 4 year-old children**, and worse than that, while it maintained admissions flexibility for any child 'younger than 5' (including 3 year-olds), it failed to include children "**over five years old**", as defined in the SSFA 1998.

The 2009 Code also added more information about admission numbers, which "*must refer in each case to children being admitted to the school for the first time. They must not include children transferring from earlier age groups, except where in the case of a primary school making nursery provision, the admission number will be the number of all children to be admitted to the reception year, and including children who may have attended the nursery (whose parents must make separate applications for places in reception)... 1.18 Once an admission number has been set by the admission authority, schools should not admit children above the published number unless the school and the local authority agree that admitting above that number will not adversely affect the school in the longer term and will not have a detrimental effect on neighbouring schools.*"

- In light of the fact that the software for most local authority online application forms for admission to primary school only works for children within a strict 12 month window, and parents of summer born children have to apply for a school place separately, on paper, and usually with additional 'documented evidence' to explain why their child didn't start school earlier than compulsory school age, it's perhaps easy to see how "admission numbers" and the rules about not exceeding them, has led to admission authorities saying "no" to summer born entry to Reception class at age 5. Incredibly, this report's authors are aware of a recent case where it transpired that the *only* barrier to a summer born child entering Reception at compulsory school age was a software problem. Truly, '**the computer said no**'.

The 2009 Code also brought 'Deferred entry to primary schools (2.69)' and 'Admission of children for a school place outside their normal age group (2.70)' closer together in the Code. The latter paragraph also **removed an important right of appeal**: "*Admission authorities must make decisions on the basis of the circumstances of each case. Parents refused an application for a place at the school have a statutory right of appeal, but **this does not apply if parents are offered a place other than the year group in which they applied for.***" It would be very interesting to discover, given that the current DfE maintains that summer born children entering school for the first time are applicants "*outside their normal age group*", whether this assertion was shared by the previous Government.

- Did two separate Governments really conclude that it would be fair for parents of a summer born child refused a place in Reception class – an entry class to primary school according to the 2012 Code – to have no right of appeal if an admission authority says, '*No, your child must lose their critical foundation year and enter Year 1 instead*'? Or was it an accidental by-product of the merging of two distinct and separate areas of the 2003 Code?

Interestingly, the 2009 Code included information on the **admission of 3 year-olds into Reception class**, a situation surely more correctly defined as requiring "*exceptional circumstances*" than admitting 5 year-olds:

*"2.68 Admission authorities should take into account the totality of provision for three and four year olds in their relevant area when making changes to arrangements for admission to full time education. **Three year old***

children should not normally be admitted to reception classes, except where, in exceptional circumstances and as part of development of a local authority supported Foundation Stage Unit or Sure Start Children's Centre on site, there may be good reason to combine nursery and reception classes. If a school wishes to alter its age range to admit a younger age group, it will need to publish statutory proposals."

Also in 2009, the findings from *The Parents Omnibus Survey** were published, and suggested a stronger preference for deferral than that being provided for: 60% of parents felt that parents should have a choice on when their child started school (30% no, 10% unsure); 58% agreed that summer born children should start school in the September following their 4th birthday (**25% no, 17% unsure**); 55% said that they would choose for their child to start school in the September after their 4th birthday, **32% would prefer to wait until their child was 5** and 12% wanted another point between the two. Of those who wanted to delay their child's start, **57% would take up the offer of full-time childcare instead (15% no, 16% unsure, 13% would prefer part-time)**.

*cited in *Month of Birth and Education Schools Analysis and Research Division. Research Report DFE-RR017 July 2010*

In the 2008/9 Chief School Adjudicator's Annual Report, Dr Ian Craig recommended: "**Greater clarity is needed in the Code** (currently paragraphs 2.65 and 2.69) about parents' rights relating to deferral of school places until the child is of statutory school age." Unfortunately, the focus on deferral again, appears to overlook the situation where a child starts school at compulsory school age, and Mr Balls' response to Dr Craig was, "*We are currently consulting on a change to the Code to meet the commitment in Rose Primary Curriculum Review that **from the 2011/12 school year, all children will be entitled to start school in the September after their fourth birthday, or to be offered 25 hours of free early learning a week if they choose to defer their child's entry to school. We would welcome your input to the consultation.***"

It was around this time that two new campaigns began in relation to the admissions of summer born children. In January 2008, the baby charity *Bliss* contacted Ed Balls MP outlining its concerns, and followed this up with further action in August 2011 (responding to the Government's new Code proposals), questioning Mr Gove in January 2012 and then meeting with Department for Education officials in February 2013. Most recently, in November 2013, one parent campaigner, invited to speak in the House of Commons at a *World Prematurity Day* reception, proposed that premature babies should be able to start school based on their due date, rather than their actual birthday. This would clearly require a change in the legislation for spring born babies, but the fact that many parents of summer born children *with* exceptional circumstances (e.g. very premature births) and often *documented* developmental delays have not been allowed to enrol in Reception class at age 5 illustrates just how high admission authorities place the bar – when in fact just being '*summer born*' should be an adequate reason.

In the autumn of 2009, campaigners in Northern Ireland began a process that this year resulted in the Education Minister provisionally agreeing in 2013 to introduce a measure of flexibility with regard to the age which children start school. Currently in NI, most children have to start school at 4, due to the strict age criteria stipulated in the region's relevant legislation, meaning that NI has the lowest statutory starting age anywhere in the world. The campaign group *ParentsOutLoud* has had growing support from parents, teachers and academics, in its efforts to permit some flexibility for the youngest for year children, together with others who might clearly benefit from a further year of pre-school provision (e.g. premature birth children).

2010s

In the event, the 2010 Code set out: “Our vision of fair access to 21st Century schools is for **all schools to have fair and lawful admission arrangements and policies**. To realise this goal we need to be responsive to the needs of parents, families and their communities, and ensure that local authorities and schools are accountable for achieving fair access. **It is only right that parents and the wider community have a say in the admission arrangements of their local schools**. This is why we have placed a new duty on all admission authorities to consult with parents and the local community on their proposed admission arrangements in order to ensure arrangements meet the needs of the local area.

In his review of the primary curriculum, Sir Jim Rose recommended that children should ideally start school in the September following their fourth birthday. I accepted that recommendation and want all parents to be able to choose this option **if that is what best for their child**. Parents can choose for their children to start school on a part time or full time basis, and **can also choose a place at a School Admission Code nursery or other early learning setting if they would prefer this**. Arrangements to provide parents with this choice will be in place from September 2011.”

- This does not stipulate a Year 1 entry for any 5 year-olds who remain at nursery, pre-school or home prior to compulsory school age, but this was the interpretation by many admission authorities – most likely because of the 2009 and 2010 Codes’ definition of Reception class.

The 2010 Code added one new stipulation to its arrangements for ‘Admission of children below compulsory school age’, which was that “parents can request that their child attends part-time until the child reaches compulsory school age.”

- In a talk titled ‘Changing Education Paradigms’ circa 2010, the eminent educationalist Sir Ken Robinson questioned why “we still educate children by batches... we put them through the system by age group. Why do we do that? Why is there this assumption that the most important thing kids have in common is how old they are? ...it’s like the most important thing about them is their date of manufacture... If you’re interested in the model of learning, you don’t start from this production line mentality.” His views are clearly at odds with those of many admission authorities, whose primary focus is on a summer born child’s chronological age when deciding which year group they should enter at compulsory school age.

Following the May 12, 2010 formation of a new Coalition Government, the DfE set out its stall for another new School Admissions Code, and a School Admissions Appeal Code. In response to this, and somewhat portentously with hindsight, the Chief Schools Adjudicator Dr Ian Craig warned, “**I think we need to be very careful that while we’re making [the Code] more accessible we don’t simplify it to such an extent where it becomes a useless document**”.

In February 2011 (in the uncorrected transcript of oral evidence before the Education Committee HC 782), while responding to questions about the 2010 Annual Report of the Chief Schools Adjudicator, Dr Craig said, “I think, inevitably, with 20,000-odd schools in England, of which about a third- 6,000 or so- are their own admission authority, they **all have their own ideas of how to interpret legislation, regulations and the admissions code**. I don’t think there are many that deliberately go out of their way to evade the code, legislation or regulation, but **there are disagreements about how some of the issues can be put into practice**.”

On May 27, 2011 in a DfE press release titled, “*New admissions code: a fairer and simpler system*”, the Education Secretary Michael Gove launched a consultation to make the school admissions process simpler, fairer and more transparent for all parents. Mr Gove said the current Code was “*bureaucratic and unfair. **You shouldn’t have to hire a lawyer to navigate the school system.** We are trying to simplify it and make it fairer.*” Unfortunately, his statement has not held true for the rights of summer born children, the wishes of their parents and their right of appeal...

On January 31, 2012, the Education Committee held an oral evidence session, for which the general public were invited to pose questions for Mr Gove via twitter. The baby charity *Bliss* asked about the School Admissions Code: “*Why is there not the flexibility in the SAC to allow summer born, preterm children to delay their entry to school by a year?*” The response was as follows:

Gove: “*That requires a long answer.*” [pause and background laughter]

Chair: “*You can have a little bit longer.*” [more laughter, including by Gove]

Gove: “***We want children to be in school learning as quickly as possible.***”

Chair: “*And therefore you rule that out do you?*”

Gove: “*I’m more than happy to look at the arguments but we spent quite a lot of time looking at them and decided that the most appropriate thing to do was to have **as many children as possible benefitting from being in school as early as possible.***”

The authors of this report take pause here to wonder whether Mr Gove is familiar with the children’s fable *The Hare and the Tortoise*, in which the race to the finish line is won by the participant who makes the slower start in the beginning. However, regardless of political views and policies, a parent’s instinct about the natural readiness and development of their child to enter the competitive ‘*race*’ through schooling should surely still be respected according to wider legislation, “*so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure*” – which Reception class at compulsory school age certainly is.

In February 2012, the new Code came into force, and perhaps most notably, provided this definition of Reception class: “*An **entry class to primary schools** providing education suitable for children aged five and any children who are under **or over five years old** whom it is expedient to educate with pupils of that age*”.

In the same month (February 2012), an alliance of early years individuals and organisations called *Early Childhood Action* was founded, and it included this statement in its ‘*Manifesto for action 2012/13*’:

“*Children who are born prematurely can be placed at a disadvantage if they are legally forced to enter school based on birth date rather than expected date of birth. There needs to be much greater flexibility in the school-entry framework for a number of reasons, including **the importance of every child having the necessary time to achieve emotional and social readiness for more formal learning.** All children should have the right to have their school starting date deferred at least until the legal date of entry, and without losing any of the rights accorded to other families. **Parents also should not be pressurised in any way to bring forward school commencement before statutory school age.***”

During 2012, a group of parents, in a move first initiated by Stefan Richter, parent of a summer born daughter, set up the group “*Campaign for Flexible School Admissions*” and set about urging the Government to respond to

the growing crisis of enforced school entry prior to compulsory school age and the penalty of losing an entire year of education for anyone refusing to comply with these 'rules'. A facebook group by the same name (established by Julie Thomson), and a website representing the group's views (*summerbornchildren.org* set up by Pauline Hull) followed. Interestingly, the authors of this report have learned that back in 1999, another group of concerned parents who called themselves "Action for Fours" had also contacted their local MP because they felt they should not be forced to send their children to school earlier than compulsory school age. Of course the difference between then and now is the dramatic development of social media, which has changed everything. Parents of summer born children who want to wait until compulsory school age before enrolling their children in school are undoubtedly a minority, and in the past may have felt isolated, alone or 'different', but social networking and blogs have brought these parents together, and in doing so, aided the gathering of evidence for this report.

During the course of 2012 and 2013, in response to complaints, the Minister of State for Schools and Cabinet Minister David Laws has sent numerous letters to parents of summer born children (including the case example on page 3, of the family that re-located from Scotland to England with a daughter facing forced entry into Year 8 instead of Year 7) maintaining the position that regardless of parents' concerns and divergent wishes for their children's best interests, the DfE will continue to leave decisions regarding year group entry in the power of local admission authorities. On occasion, Mr Laws has offered to arrange for officials to contact a parent's local admission authority, but while this intervention in some individual cases has been appreciated, it doesn't solve what is a very serious nationwide problem, affecting many parents who don't know they can write to the DfE and don't even know about the July 2013 advice. It is certainly not providing fair and equal access for all.

- One parent has likened the abdication of responsibility to local authorities as the Government "*hanging us out to dry*", and again, the communication from Mr Laws is a direct contradiction of Elizabeth Truss MP's communication of the DfE's position, that "*We are absolutely clear that parents should be able to say to a school, "We want our child, who is aged five, to enter reception", if they feel that that is in the best interests of their child. That is what we are elucidating in the new guidance that we issued this summer and that is what we will be following up on with local authorities and schools.*"

In May 2013, the DfE published a 'Governors' Handbook', which includes the following information:

*"6.7 Duty to have regard to the views of parents – Maintained school governing bodies should reassure themselves that mechanisms are in place to **enable all parents to put forward their views at key points in their children's education**. They should be able to demonstrate the methods used to seek the views of parents and how those views have influenced their decision making.⁸⁸ As part of the wider inspection process, Ofsted considers responses to its online survey Parent View. The views of parents help inspectors form a picture of how a school is performing and As part of the wider inspection process, Parent View can provide valuable information on how well the school engages with parents. Governors can access the toolkit Ofsted has developed for schools... **An individual can complain to the Secretary of State for Education if they believe that a governing body is acting 'unreasonably', or is failing to carry out its statutory duties properly.**¹² The Education Funding Agency (EFA) handles complaints about academies and free schools on behalf of the Secretary of State."*

Also in May 2013, the DfE published ‘Changes that reduce burdens on maintained school governing bodies’, which includes information about “Removals and simplifications that have already been made – School admissions*” and “What we intend to remove or simplify**.” For example:

* “Governing bodies no longer have to advertise for new admission appeals panel members every three years and are subjected to a simpler set of admissions criteria and procedures.

“Complaints – **The reduced scope of Local Government Ombudsman means that they no longer have the power to investigate complaints** about the internal management of schools and therefore governing bodies do not have to comply with their directions.” [SEN exception]

“Early years – The new Early Years Foundation Stage framework reduces bureaucracy for professionals, simplifying the **statutory assessment of children’s development at age five**. It also simplifies the learning and development requirements by reducing the number of early learning goals from 69 to 17.”

** “School organisation – Ministers are currently considering where changes might be made to the existing legislative and policy requirements for making significant changes to schools. The aim is for schools to be more in charge of their own decisions about size and offer and to be able to respond to what parents want locally without being unduly restricted by process.”

The debate over the best age for children to start in school (and the style of learning or education they should experience once in school) has raged for many years, and in September 2013, the organization ‘Save Childhood Movement’ launched its *Too Much Too Soon* campaign. The group, made up of academics, teachers, authors and charity leaders, sent an open letter to The Daily Telegraph with 127 signatories challenging “**developmentally inappropriate policy-making**” and calling for a re-think on the English school starting age. The campaigners insist that formal education (not necessarily school attendance) should wait until age 6 or 7 years old, which a spokesman for the Education Secretary called “**misguided**”, and then two months later, at the other end of the spectrum entirely, the chairman of Ofsted, Baroness Sally Morgan, while speaking at a London conference organised by ARK Schools in November, is reported to have advocated for school entry as early as 2 or 3 years of age – completely in line with Mr Gove’s 2012 position of ‘*the sooner the better for schooling*’.

- What interests the report authors in each of these contexts, is the references in media reports to what is currently compulsory school age. Baroness Morgan is reported to have said, ‘*We’ve increasingly got [age] 5 to 18 schools, why not 3?*’, which is ironic given that the vast majority of children are in school at age 4, whereas many media articles covering the ‘*Too Much Too Soon*’ campaign launch reported, “*By law, children must be in school by the age of 5*”. The latter is of course factually incorrect – yet widely believed to be true.

In September 2013, nine resolutions were submitted to the AGM of the *British Association for Early Childhood Education* (known as *Early Education*), three of which were prioritised for discussion and passed by the membership. Number two reads, “*Since it is now well established that summer born children are too young to benefit from the greater formality of most reception classes and are disadvantaged throughout their school lives and beyond, we call on the government to require head-teachers of all state funded schools, and local authorities to enable parents of summer born children to choose to delay for a year the start of schooling and that these summer born children enter the reception class and can stay in the cohort where they are oldest in*

the class throughout their schooling. This requirement would apply to children born in May, June, July and August.”

Subsequently, in November 2013, its chief executive Beatrice Merrick told the authors of this report, "Early Education believes that **all children are entitled to high quality early education.** One area in which we need to see improvement is to ensure that summer born children are not disadvantaged in comparison to their older peers, which means ensuring that pedagogy is appropriate to all children in the class. **This can be achieved by allowing summer born children to defer or delay their start, but equally important is ensuring that appropriate early years pedagogical approaches are used in the early stages of KS1, as well as in the Early Years Foundation Stage.** It is the responsibility of schools and local authorities to ensure each child is given the **best possible opportunities to learn and thrive, in the ways most appropriate to their age and development.**"

On September 10, 2013, the solicitors firm Stone King published an article on its website titled, "Summer-born Children", which contains strong criticism of the DfE's July 2013 advice and queries the wisdom behind its publication. For example, it says:

The "DfE issued non-statutory guidance on admission to school of summer-born children. It is useful but **raises questions that might have been better left alone.**

"The sting in the tail is the view taken by the Code that there is no right of appeal in relation to an offer of a place in a year group other than the one that the client wants. That raises the question of what parental preference means. If one reads the legislation in its strict terms, it is no more than the expression of a preference for a school... **However, in any meaningful terms, preference indicated by an application for a place, especially if the application is made in the routine procedure, carries with it a necessary implication that the preference can only be properly complied with by an offer of a place in the year group that the parent wants. Any failure to meet that implication must, in our view, give rise to the statutory right of appeal and whilst in many respects the Admissions Code has the force of law, our view is that it cannot take away rights conferred by an Act of Parliament.**

"We have raised these concerns with DfE, asking them at least to strengthen the new guidance by making it clear that **an application for a place in the "wrong" chronological age group should be agreed to unless there are exceptional circumstances.** The response has been, in effect, that they are not aware of any problems in practice and in any case that the Admissions Code will not be amended during the lifetime of the present Parliament.

"What, then, should own-admission authority schools do when faced with an application for a "wrong" year place? **Our strong view is that at primary level a request in respect of a summer-born child to defer a year should be agreed to unless there are compelling reasons why the child should start school sooner.** At the same time, the school should just draw attention to the possibility that the parents could experience difficulty at secondary transfer time. At secondary level, we consider that parents of a child in Y6, no matter what the background is to the child's presence in Y6, should be dealt with through the co-ordinated admissions process for entry into Y7 irrespective of the child's date of birth. **Acting otherwise seems to us to be irrational and challengeable, even though the Admissions Code suggests otherwise."**

On November 29, 2013, in presenting the Annual report of the Chief Schools Adjudicator for England, the Chief Schools Adjudicator, Dr Elizabeth Passmore “**called again for all admission authorities in England to comply fully with the Admissions Code on consulting, determining and publishing their arrangements to ensure fair access for all children.**” However, at the same time, Dr Passmore said “**the Department for Education should consider issuing guidance for schools and local authorities so that there is fair access to schools for all children on reaching compulsory school age so that children are not disadvantaged by any decision their parents make about the care of their children prior to compulsory school age or by access to specific child care**”.

- The irony of this recommendation has not been lost on parents of summer born children, who in the midst of this year’s admissions round are facing obstruction from admission authorities, minimal (and in many cases, no) practical help from the DfE, and an uncertain future for their children. The 2012 Code cannot help them, the July 2013 advice cannot help them, they have been told they have no right of appeal, and the DfE is refusing to address the problem by issuing additional statutory guidance on summer born applications (despite being asked to by parent campaigners and now the OSA), either because it doesn’t want to concede that its new Code is not fit for purpose – or it agrees that all children should start school at age 4, and certainly before they reach age 5.

On December 5, 2013 during a House of Lords Debate and a motion to take note moved by Baroness Morgan of Huyton regarding ‘Education: Contribution to Economic Growth’, Lord Storey said, “Another important issue, which shows that **we must ensure that no children are left behind** and is often not talked about, is that of **our summer-born children**. It can affect our rankings, our school performance and, of course, the summer-born children themselves. **Research and evidence** has shown that summer-born children have a **25% lower attainment at key stage 1; 20% of summer-born children are less likely to go to university; and, staggeringly, 50% of summer-born children are likely to be diagnosed as having special educational needs**. In a week in which we have been looking at international comparisons, it is interesting that the 19 OECD countries with different starting dates show that later formal education helps to reduce birth-date effects.”

ADMISSIONS CONFERENCE 2013

An Admissions Conference delivered by Capita took place on December 3, 2013, which set out to address and update progress made on the implementation of the 2012 Code so far. The authors have not yet ascertained whether the summer born issue was discussed, but below are examples of policies, practices and procedures of the admission authorities in which some of the conference speakers work:

- **Example A**

When can my child start school?

Birthday: Between 1 September 2009 and 31 August 2010

Start date: Autumn term 2014 - schools have a staggered intake in September

*Parents can request that the date their child is admitted to school is deferred until later in the year or until the term in which the child reaches compulsory school age and can request that their child takes up the place part-time until the child reaches compulsory school age. The place will be reserved until that time. However, **children must be admitted into their correct chronological year group.***

Parents should discuss all the options with the headteacher of the school taking into account their views of a child's maturity and readiness to enter reception class.

ADMISSION OF CHILDREN OUTSIDE THEIR NORMAL AGE GROUP

[Authority] will only accept applications for children outside their chronological age group in exceptional circumstances and must be supported by evidence from the child's current school (if appropriate), medical professionals and an educational psychologist. [Authority] has agreed guidelines to cover consideration of out of phase applications.

- **Example B**

11 Placement of pupils out of their chronological age group (moving up a year)

11.1 The year group with which a child is taught has implications for a child's social as well as educational development. There are also implications for the points at which a child starts primary education; transfers to middle, to secondary, to post 16 and to higher education; for the timing of public examinations; and for the stage in the child's education at which he or she reaches the end of compulsory school age.

*11.2 Consideration of **exceptional circumstances for placement of pupils out of their chronological age group** may be applied when the pupil demonstrates exceptional intellectual interests, skills and achievements in all subject areas, to an extent that it is not reasonable to expect curriculum differentiation within his/her chronological year group. At a minimum they have achieved exceptional levels in all areas of the National Curriculum.*

- There is no mention of delay into Reception class, only moving up a year, and no mention of what happens should a parent wish their summer born child to enter Reception at compulsory school age.

- **Example C**

The provisions of paragraph 2.16 of the Code, which must be made clear to parents, appear to have been omitted from the Authority's admission arrangements.

- **Example D**

The report authors have been made aware that one of the speakers, whilst happy to endorse a 'delay request', advised that these 'delayed' applications would be considered only after all the other applications that were in 'the correct chronological cohort' were offered places first.

REPORT CONCLUSIONS

To summarise first, in the simplest terms: The February 2012 statutory School Admissions Code proved not to be sufficiently clear regarding flexibilities for summer born children entering Reception class at compulsory school age, and so new non-statutory advice was issued 18 months later, in July 2013. However, this advice was not sufficiently clear either, and led to solicitors, the OSA and parent campaigners calling on the DfE for more advice and/or guidance. However, any new non-statutory advice, even if it's perfectly clear, cannot supersede the original statutory (albeit unclear) guidance in the 2012 Code. Therefore, the DfE needs to acknowledge that since the original guidance is not clear, and therefore not fit for purpose, it now needs to be updated or replaced. At the very least, the DfE needs to highlight the fact that primary legislation supersedes the Code, and communicate this message to *all* admission authorities, in time for the allocation of Reception class places in April 2014.

It is possible that part of the reasoning behind the Government's reluctance to provide new statutory guidance is the fact that the 2012 Code is relatively new and the DfE does not wish to draw attention to the fact that during the Code's major overhaul, access to a full 7 year primary school education for 5 year-old summer born children was not sufficiently considered or explained – but fear of perceived incompetence is not a good enough reason for inaction when the outcome, as shown in this report, is in effect discrimination against a whole group of individuals. **This Government is not the first to forget summer born children in its policies, but it would do well to be the last.**

- **Compulsory School Age is Effectively Lowered**

It would appear that successive Codes, published by all Government parties, have fashioned a curious state of affairs in the experience of most applicants:

- Age 4 entry to Reception class *prior* to compulsory school age is early but considered normal.
- Age 3 entry to Reception class is even earlier but allowed, by law, in exceptional circumstances.
- Age 5 entry to Reception class *at* compulsory school age can be requested but is not always guaranteed.

- And for summer born children, age 5 entry to Reception class *at* compulsory school age is described as a '*delayed*' school start and is usually only considered in exceptional circumstances.

Therefore, since access to Reception class at age 4 is considered '*normal*' and encouraged, but at age 5 is considered '*delayed*' and in the vast majority of cases it's *denied*, this is not only evidence that England's compulsory school age has been lowered, but also that primary legislation is being flouted in order for it to happen.

- **Abdication of Responsibility**

The DfE appears to have taken the line of least resistance in its stance that there will not be any amendments to the 2012 Code, and that it would rather just '*monitor complaints*'. Not only is this decision incompatible with the best interests of the general public (including parents but also taxpayers funding protracted admissions battles at a local level and unnecessary SEN costs for children forced to start school early), it is incompatible with the

department's lead position with responsibility for the United Nations Convention on the Rights of the Child. The DfE's primary consideration should be the right of **all** children to have access to a full and effective education.

Instead, the DfE subjects parents to a prolonged and stressful correspondence and complaints procedure with their local admission authorities that can take months (and even years in some cases), when the applications window of time is comparatively very small and when primary school places are extremely oversubscribed in many areas (fear prevents parents from taking *any* chances). It has removed the right of appeal for parents of summer born children applying for a Reception place at compulsory school age (in the Code at least) and it appears to have limited control over admission authorities that demonstrate a blatant disregard for the law and/or the spirit of the law. It's scandalous that admission authorities have needed to be reminded of their obligations, and that they have not already aligned their arrangements and policies with *all* relevant legislation.

- **Breaking the Law**

If an individual continually subverted legislation, there would be consequences, and yet admission authorities have suffered no such consequences.

The admission arrangements process appears to be self-policing, with many admission authorities appearing to be taking advantage of the circumstances, to continue breaching legislation. This report questions the persistent DfE view that *"these decisions are best made at a local level"* (Mr Gove). Worse still, there is no longer any requirement within the Code for a local authority to state whether or not admissions arrangements comply with the Code in their annual report to the Office of the School Adjudicator, and as such, admission authorities are very likely reluctant to object to any other unlawful arrangements relating to this matter that they may be aware of.

- There appears to be NO governance, NO accountability, and NO transparency.
- How is it acceptable for admissions authorities and local authorities to BREAK THE LAW?
- Where are the sanctions? Admissions legislation and the Code are silent on any sanctions.
- Why does the Minister for Schools exclusively quotes parts of an ambiguous Code when referring to children entering Reception class at compulsory school age – rather than the solid, clearer, definitions that can be found in primary legislation?
- Why is the Minister's department reactive rather than proactive?
- When will the Minister strengthen the summer born advice, which appears to have confused rather than clarify, with clear statutory guidance?
- When will effective remedy be implemented, and the Code amended?

The authors are neither early years educationalists, historians nor lawyers. They are just two parents, one a journalist and former teacher, attempting to understand and challenge the unfair and unclear system that has been imposed on them, their children and numerous other families like them. This report is not presented as legal advice or guidance for parents, and contains public sector information licensed under the Open Government Licence v2.0. and Parliamentary information licensed under the Open Parliament Licence v1.0.

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APPENDIX A - MINUTES OF MEETING WITH THE DfE 2013

Meeting to discuss summer born children and school admissions

Date 29th January 2013

Location Sanctuary Buildings 8.01

Time 1315 – 1415

Publication Not protectively marked

Present Stefan Richter – parent

Stacy Wright – parent

David McVean – DfE

Jamie Zucker – DfE (note taker)

Background

- Stefan Richter and Stacy Wright came to discuss the issue of school start dates and summer born children with David McVean.
- Both parents feel it is in the best interests of their summer born children to delay the start of school (in year R) to the September following their fifth birthday.
- Mr Richter and Ms Wright have faced difficulties in arranging for this to happen and are members of associated campaign groups on Google and Facebook.
- Both parents have achieved different levels of success. Mr Richter has agreed the arrangement in principle with the head of his daughter's future school (an own admissions authority academy).
- Ms Wright is still facing resistance from Kent County Council regarding her son's start at a local maintained school.
- At the start of the meeting it was noted that summer born children were the topic of a PQ delivered in Parliament last week. David McVean confirmed that he will be meeting with BLISS next week to discuss the issue of premature summer born children.

The main points raised by Mr Richter and Ms Wright were as follows:

- There is confusion in local authorities about this aspect of the Admissions Code. This is leading to a growing number of cases of conflict within and between authorities. This is causing a great deal of struggle and heartache for many parents.
- Admission authorities seem fixated with date-of-birth rather than the needs of the child and the wishes of parents. Within admission authorities it is often unclear who has the authority to deal with this issue and parents get passed between staff.
- Teachers and children's services officials usually agree that a delayed start date is in the interests of some summer born children. However, they are often reluctant to say so officially and do not want to interfere with the work of admissions teams.
- Local authorities claimed that summer born children often require additional educational support. Allowing them a later start would save resources and money.
- The new Admission Code seems less clear on the issue of delaying entrance. Admission authorities are being too prescriptive in their interpretation of Section 2.17 and do not see it as relevant.
- There is evidence that in cases where schools are their own admission authority, parents have enjoyed slightly more success. This was the case for Mr Richter.
- Parents are becoming increasingly active on this issue. Related Facebook and Google Groups are growing in size.

- Other than Wiltshire, which has made some positive improvements (particularly in the case of premature children) there are no identified examples of good practice. However, this may be due to the fact that satisfied parents are unlikely to join the associated groups and forums.
- Ms Wright indicated that she had recently been contacted by reporters from the Telegraph to discuss the issue.

David McVean offered the following:

- We are grateful for all the work of the groups in raising the issue and all the above points were useful information. The Department is meeting with BLISS next week and will consider what, if any, action may be needed to improve the situation.
- The new Admissions Code (2012) aims to be as succinct as possible. Section 2.17 allows parents to seek places for their children outside of their age group and obliges admission authorities to make decisions based on the circumstances of individual cases. This drafting was less prescriptive than previous Codes, but it was not intended to be a definitive list.
- David asked that the group continued to send cases and examples, though he would also welcome any where it was working well.

Action Points:

1. Ms Wright to send her case to David in the event that she is not satisfied with the response from Kent County Council.
2. Mr Richter and Ms Wright to continue to send David more case studies so that the Department can a) gain a better understanding of exactly where the resistance is coming from, b) identify examples of where the process is working well.
3. Jamie Zucker will send web links to:
 - a. The School Admissions Code
 - b. The Appeals Code
 - c. Month of Birth and Education - Schools Analysis Report
 - d. The Information on FAP that was recently published on Fair Access Protocols.

APPENDIX B - OFFICE OF THE SCHOOLS ADJUDICATOR LETTER 2013

On October 16, 2013 Michelle Melson, one of the report authors, sent the letter below to the Office of the Schools Adjudicator. The letter was also accompanied by numerous examples of admission arrangements with author's notes (52 pages in total) that are not included here.

In its December 2013 response, the OSA agreed that some of the matters raised concurred with the Chief Adjudicator's findings, reported in the OSA's November 2013 annual report to the Secretary of State (i.e. that too many admission authorities do not comply fully with the Code in respect of consultation about and determination of their admission arrangements). The OSA also said that the information provided would be used to inform policy colleagues within the DfE at one of the upcoming meetings between the Chief Adjudicator and Minister of State.

Letter to the OSA

"Dear Ms Passmore OBE,

Due to personal circumstances I have taken an interest in admission arrangements, particularly in relation to the flexibilities allowed under paragraph 2.16 of The School Admissions Code 2012 (the Code) and also the legal meaning of 'reception class' within section 142 of the School Standards and Framework Act 1998, the meaning of 'reception class' within the Code's glossary and the meaning of 'relevant age group' in footnote 12 of the Code which refers the reader to section 142 of the SSFA 1998.

As a consequence I have begun very rudimentary compliance monitoring of admission arrangements in relation to this and any blanket policies an admissions authority may have in place. I have attempted to look at arrangements from the perspective of a parent looking at information available when contemplating applying for a school place, many parents may not even be aware of what 'determined' admission arrangements are and so I have looked at information on arrangements that is generally not published until autumn/winter such as admissions booklets and supplementary information as well as any 'determined' arrangements where these have been relatively easy to find.

It has been difficult in some cases to locate full admissions arrangements, and in some cases any 'determined' arrangements at all. It would appear that many admission authorities choose to avoid, ignore or subvert current legislation. Which begs the question; how can parents and any other interested party object to admissions arrangements which are incomplete or missing even before the 30th June deadline?

As the current Code came into effect 1st Feb 2012 and before that there was consultation; the requirements can hardly have come as a surprise; which leads me to believe that admissions authorities and local authorities must have a basic disregard for the law in this respect.

As this process appears on the whole to be 'self policing' on the part of local authorities (as all arrangements from all admissions authorities are to be submitted), it would appear that they are taking advantage of the circumstances to continue breaching legislation when the local authority is the admissions authority and are therefore also reluctant to object to any unlawful own admission authority arrangements, particularly as there is no longer any requirement within the Code to state whether or not arrangements comply with the Code in their annual report.

As there are 152 LEA's, I am attempting to work through as many of the arrangements as I am able. This is a job in itself. There are also I believe around 7,000 schools which are their own admission authority, it is therefore well-nigh impossible to go through all these arrangements; I have looked at very few, however I will endeavour to review as many as possible.

I have made some brief notes (included below) where an apparent breach of legislation or something unclear or unreasonable has 'jumped out at me'. As previously stated, my interest regarding arrangements lies with 2.16 of the Code and the legal meanings noted in my first paragraph, so this has been my focus, but where I have noticed other apparent breaches which are noteworthy, I have recorded these also.

It would appear that admissions authorities are using paragraph 2.17 of the Code as a blanket 'catch all' response and are paying lip-service to requests from parents who wish their children to start school IN 'reception class' AT 'compulsory school age', as if summer-borns starting reception at compulsory school age would be 'outside their normal age group', when really this clearly is not the case – how can a five-year-old attending a reception setting possibly be 'outside their normal group'? Summer-borns starting school in 'reception class' at 'compulsory school age' fit firmly within the legal meanings of the terms 'reception class' and 'compulsory school age', more so in fact than any other pupil. These children would be five-years old when starting reception and remain five-years old during their attendance in a reception setting.

There is an impetuous need by admission authorities for 'evidence' to be provided for such requests, when nowhere in legislation is this a requirement, other than perhaps if using 2.17, which appears to be a misuse of legislation in these circumstances. Why are five-year-olds in reception class now considered to be 'outside of normal age group'?

This is no doubt a consequence of The Rose Report, which whilst ensuring that those parents of summer-borns wishing their children to start reception at just turned four-years-of-age, can now do so (a whole year before reaching compulsory school age), it has brought about a skewed and distorted view of reception class age. For example my LEA initially advised me that reception class was for children below compulsory school age; this is not what legislation states.

Paragraph 2.16 a) states that *"a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age,"* which appears to accord parents the right to choose when their child starts school and this should be considered alongside the legal meaning of 'reception class', not as a standalone clause. The majority of summer-borns will remain aged five during their attendance in 'reception class'.

The current stance that admissions authorities are upholding, that summer-borns starting in reception class aged five are 'outside their normal age group' and asking parents to provide 'evidence' as part of their request is unreasonable and perverse in the light of all legislation; it defies logic and no sensible person would arrive at such a distorted conclusion, it is corrupt; it enables authorities to keep doing what they are doing – weakening legislation to fit their bureaucratic processes and mindset.

Parents who do not want their summer-born children to begin school until compulsory school age have to take a 'gamble' on whether or not the admission authority will grant them a reception place, even though ALL relevant legislation appears to accord parents and children this right. In this way, parents are often forced to send their children to school up to a whole year before required, often under threat such as this: *"Hounslow London Borough Council*

2014/15 – Applicants whose children have birthdays in the summer term should be aware that, if they wish to defer, they will need to apply for a Year 1 place for the following September and if the school is oversubscribed they are very unlikely to obtain a place.”

If a parent of a child of four years of age applies to have their child enter a Reception Class, i.e. before that child reaches compulsory school age, and in some cases a whole year before compulsory school age, they are not required to justify this ‘early’ application nor does their application need to be considered “based on the circumstances of the case”. However a parent of a summer-born child who wishes to elect to wait until their child is five, their legal right, before they enter reception class is required to jump through hoops.

Taken from the recently published non-statutory guidance:

“Q7. If a parent wants their summer born child to be admitted to the reception class in the September following their fifth birthday, how should they go about arranging this?

A7. Parents should discuss this as soon as possible with the schools they are interested in applying for and the local authority. Parents should make it clear that they wish to apply for a reception place a year later than the year into which the child could have been admitted.”

Parents can express a preference for at least three schools, in some LEA’S it is more. The proposition in A7 suggests that a parent would have to enter into a dialogue with all possible preferences plus which ever type of admissions authority or even authorities are involved, be it LEA or Own Admission Authority; that’s a lot of possible routes to go down for a reception place.

School preferences are just that, they are not a choice, so parents could still come unstuck. Too much burden is placed on parents to accomplish a reception start AT Compulsory School Age before they have even started the application process.

No other parent has to go to these lengths. This is discriminatory, it is wholly unjust.

Also the parent of the child entering Reception Class before compulsory school age has the right of appeal. A parent of a Summer Born child who elects to wait the extra period until their child reaches five does not have the right of appeal if they are then not offered a place in reception class.

Again, this is discriminatory.

This is just one problem faced by some parents of summer-born children which is often exacerbated, deliberately in many instances, by the admissions arrangements drafted and issued by many Local Authorities and Own Admission Authorities.

Taken together these factors demonstrate that the reality out there is discriminatory behaviour against parental choice when all the while the “message” being trumpeted is “more choice for parents.”

In a recent parliamentary debate Elizabeth Truss, stated:

“We are absolutely clear that parents should be able to say to a school, “We want our child, who is aged five, to enter reception”, if they feel that that is in the best interests of their child. That is what we are elucidating in the new guidance that we issued this summer and that is what we will be following up on with local authorities and schools.”

and

“...It should be the parents who are the primary decision-makers when it comes to deciding which route is most appropriate for their child and which environment will enable their child to thrive.”

Parents who request a reception class start at compulsory school age for their summer-borns consider that is the most appropriate route for their children.

I plan to continue looking at all the other LEA's as and when possible. The situation is surely indefensible on the part of admissions authorities; will the OSA take action based on my discoveries so far? I am aware that objections to determined admission arrangements should be submitted by 30th June; does the OSA have any discretion regarding this, particularly as the problems seem so wide spread, some 'determined' arrangements appear not to be available and some admissions information has not been available until now?

Do I need to refer an objection to each set of arrangements individually or will a report such as this suffice based on the numbers involved in order for action to be taken?

As this is the time of year when parents are required to apply for school places it seems prudent that each and every admissions authority should be instructed to urgently review their published policies, as on the whole they are at best misleading and at worst unlawful.

The lack of clarity and compliance with legislation is unacceptable, how can this best be addressed with the expediency required to allow parents to make an informed decision?

Yours sincerely
Michelle Melson”

APPENDIX C – UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 2013/14

On November 21, 2013 in response to the Government's 'call for views' UK's ahead of its next (fifth) periodic report to the United Nations Convention on the Rights of the Child (UNCRC), one of this report's authors, journalist Pauline Hull, submitted the text below under the guidance heading of 'additional example/supplementary evidence for inclusion':

Chapter VI: Education, Leisure and Cultural Activities

The right of summer born children to access a full primary school education when starting school at compulsory school age

In England, following complaints from parents of summer born children whose wishes for their children to start school in Reception Class (an entry class to primary school) at compulsory school age are being denied by local admission authorities, the Department for Education published new non-statutory advice* on July 29, 2013, which it said should be read in conjunction with the 2012 School Admissions Code.

In September 2013, Parliamentary Under-Secretary of State for Education Elizabeth Truss followed this up by stating in Parliament, *"What we want to do is to empower parents... It should be the parents who are the primary decision-makers when it comes to deciding which route is most appropriate for their child and which environment will enable their child to thrive. We are absolutely clear that parents should be able to say to a school, "We want our child, who is aged five, to enter reception", if they feel that that is in the best interests of their child."*

While this assertion was wholly welcome, it did not reflect the July 2013 advice, which says, *"School admission authorities are responsible for making the decision on which year group a child should be admitted to [and parents] do not have a right of appeal if they have been offered a place and it is not in the year group they would like."*

Monitoring of incoming complaints to the Department from parents continues throughout the current 2014 admission applications round, and responses from some admission authorities to date have been very concerning. It is perhaps too soon to tell whether the July 2013 advice has been effective but it is certainly an issue worthy of U. N. attention.

It is very important that every parent is able to exercise genuine choice, protect their child's legal right to an effective education, and to have confidence that decisions made at a local level are primarily in the best interests of their child. This is especially important given the evidence that summer born children are more likely than other children in their year group to be classified as having Special Educational Needs. Therefore, parents who know their child is not ready for school at age 4, and have serious concerns about their child's ability to join Year 1 at age 5 without facing the well documented negative repercussions of missing out on Reception class, need urgent government action to help them achieve this lawful choice and to protect the rights of their child.

*Advice on the admission of summer born children – Advice for local authorities, school admission authorities and parents. Department for Education July 2013.