

## **DETERMINATION**

**Case reference: ADA 2262, 2268, 2270, 2279, 2291, 2298 and 2329**

**Objectors: Mr D Berry, a group of 11 local schools secondary schools (The Cressex School, Great Marlow School, Holmer Green Secondary School, Princes Risborough School, Sir William Ramsay School, St Augustin'e and St Bernard's Catholic School, The Amersham School, The Beaconsfield School, The Chiltern Hills Academy, The Misbourne School and The Wye Valley School), Buckinghamshire County Council, Dr K Simmons, Mr J Bajina, a group of three local primary schools (King's Wood School, Beechview School, and Marsh School), and Ms R Hickman**

**Admission Authority: The Governing Body of The Highcrest Academy, High Wycombe**

**Date of decision: 23 August 2012**

### **Determination**

**In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objections which have been made concerning the fairness of the arrangements, those which allege that they create unfair disadvantage, those which allege inadequate consultation, those which allege that new selection contrary to the Code is being introduced, and that which objects to the removal of a catchment area. I uphold the objection concerning information requested by the school and I partially uphold the objection concerning the clarity of the admission arrangements determined by the proprietor.**

**I have also considered the arrangements in accordance with section 88I (5). I determine that they do not conform with the requirements relating to admission arrangements, as set out in paragraphs 60, 61, and 62 of this determination.**

**By virtue of section 88K (2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.**

### **The referral**

**1. Under section 88H (2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by four individual objectors, Mr D Berry (DB), Dr K Simmons (KS), Mr J Bajina (JB) and Ms R Hickman (RH), a group of 11 local secondary schools (The Cressex School,**

Great Marlow School, Holmer Green Secondary School, Princes Risborough School, Sir William Ramsay School, St Augustin'e and St Bernard's Catholic School, The Amersham School, The Beaconsfield School, The Chiltern Hills Academy, The Misbourne School and The Wye Valley School) (the 11 secondary schools), a group of three local primary schools (King's Wood School, Beechview School and Marsh School) (the three primary schools) and by Buckinghamshire County Council, the local authority (the LA) about the admission arrangements (the arrangements) for September 2013 for The Highcrest Academy (the school) an 11-18 Academy.

2. The objections are all concerned with the introduction by the school of banding as an oversubscription criterion for admissions, and to related issues.

### **Jurisdiction**

3. The terms of the Academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and arrangements for the Academy School are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the proprietor, which is the admission authority for the Academy school, on that basis. The objectors submitted their objections to these determined arrangements on 18 May 2012 (DB), 24 May 2012 (the 11 secondary schools), 30 May 2012 (the LA), 5 June 2012 (KS), 8 June 2012 (JB), 20 June 2012 (the three primary schools) and 29 June 2012 (RH). I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and that they are within my jurisdiction.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). As all the objections relate to the same set of arrangements and are broadly consistent with each other, in the interests of clarity and economy I deal with them all in this determination.

5. The documents I have considered in reaching my decision include:

- a. the objectors' emails of objection dated 18, 25 and 31 May 2012, and 6,8,20 June 2012;
- b. the school's response to the objections and supporting documents;
- c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2012;
- d. information on the school's website concerning admissions;
- e. maps of the area identifying relevant schools;
- f. details of the consultation on the arrangements which took place prior to their determination;
- g. copies of the minutes of the meeting on 23 March 2012 at which the

proprietor of the school determined the arrangements;

h. a copy of the Funding Agreement; and

i. a copy of the determined arrangements.

6. I have also taken account of information which I received at a meeting which I called between the parties at the school on 4 July 2012, and of subsequent correspondence.

### **The Objections**

7. The objectors have referred objections to the adjudicator about the school's admission arrangements on the grounds that:

a. the banding arrangements are unfair (Code 1.25);

b. banding introduces unfair disadvantage (the Code 1.8);

c. the arrangements are unclear (Code Introduction 14, 1.31);

d. there has been inadequate consultation prior to the introduction of the arrangements for September 2013 (Code 1.42 – 1.45);

e. the removal of the use of a "catchment area" is contrary to the Code (1.14);

f. the introduction of banding constitutes the introduction of new selection by ability (Code 1.9 d); and

g. information requested on the form submitted by parents to enter their child for banding tests is not permitted (Code 2.4).

### **Background**

8. The school is located in High Wycombe. It is a converter Academy, having become an Academy on 1 July 2011, replacing Highcrest Community School.

9. As an Academy, the school's is bound by the relevant parts of its Funding Agreement, signed on 27 June 2011, when determining its arrangements for any year. Within the Funding Agreement, under Conditions of Grant (General) 12(a), it states "the school will be at the heart of its community, promoting cohesion..." and 12(c) "the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools."

10. On 11 November 2011 the school began a process of consulting on changes which it proposed to make in its admission arrangements for September 2013. This consultation lasted until 27 January 2012, and the governors met on 23 March 2012 to consider the responses to the consultation. They agreed a revised admission policy, and this was published on 30 March 2012.

11. The school states in its Admissions Policy for 2013/14 that it “seeks a balanced and all-ability intake which is representative of the community and of the ability of those applying each year.” In order to achieve this, the school has decided to use banding.

12. The Code, paragraph 1.25, states that

“pupil ability banding is a permitted form of selection used by some admission authorities to ensure that the intake for a school includes a proportionate spread of children of different abilities. Banding can be used to produce an intake that is representative of:

- a) the full range of ability of applicants for the school(s)
- b) the range of ability of children in the local area; or
- c) the national ability range.”

### **Consideration of Factors**

#### (i) Fairness

13. The objectors have called into question the fairness of the school’s intended process for achieving a balanced intake by the use of ability banding in a number of ways:

- DB states that there was a failure to provide any evidence in the consultation document to show that the ability range around the school locality is any different from any other non-selective Wycombe school that justifies the introduction of selection by banding. He does not say why this, or the consultation defects which he alleges, mean that the school’s arrangements are unfair. He does state that the arrangements introduce a risk that students living near the school and wishing to go there will not be able to do so, and at the meeting which I held he elaborated on this point saying that it constituted unfairness.
- The objection brought on behalf of local secondary schools says that the use of banding in the context of a local authority area in which all secondary schooling is currently selective is unfair. The schools cite research commissioned by the Department for Children Schools and Families (DCSF) in 2008 in support of this assertion (Secondary School Admissions Research report No. DCS-RR020: ISBN 978 1 84775 097).
- The LA alleges unfairness on the grounds that the requirement to undergo additional testing (over and above that required for the 11+ selection arrangements in the county) will cause disadvantage to the most vulnerable children, or those who come from disadvantaged backgrounds, who are likely, in the LA’s view, to be discouraged from applying to the school. It also questions whether the discretion given in the arrangements to governors to consider alternative evidence in

order to allocate children who have been unable to take the banding test to a band can be fair.

- KS quotes the same research as the secondary schools, and makes the same assertion. She also complains that the governors' discretion mentioned in the LA's objection does not meet the Code's requirements concerning fairness. The focus of her objection, however, is the non-verbal reasoning test which the school has decided to employ to provide the evidence needed to allocate children to bands. Her contention is that this does not meet the requirement of the Code that such tests are a "true test of aptitude or ability" (Code, 1.31) and that by implication that the arrangements are unfair.
- JB states that children from the local community who fail to obtain a place at the school will face long journeys to the available alternative schools, making the arrangements unfair.

14. The school has responded:

(i) that it does not have to provide a justification for banding, since it is an approach that is specifically permitted by the Code, based on primary legislation. I agree.

(ii) that it is likely under the revised arrangements that the intake of the school will be more closely focused on its immediate community, since the previous catchment area has been replaced by a straightforward use of distance from the school to give priority within each band. Under the previous arrangements, because the catchment area was much more extensive in one direction, some applicants living closer to the school but outside the catchment area lost out to children living further away but inside the catchment area. As the school says, the revised arrangements effectively guarantee places for those living closest to the school.

15. I have examined very carefully an impact analysis which the school has carried out on the current Year 7 cohort, using 2010 data supplied by the LA. This compares actual admissions using the previous arrangements with those that could be expected under the school's policy for admissions in 2013. The conclusion drawn by the school is that the revised arrangements would result in more admissions being from homes nearer to the school than under previous arrangements. I believe that this is a reasonable assessment, and that it makes sense taking the revised arrangements on face value. My view of the objection is that the objector's fears are linked to concerns about the impact of the arrangements on pupils of lower ability, which is discussed below.

(iii) that the assertion of unfairness made on behalf of local secondary schools, based on their perception that Highcrest is still an "Upper" (non-selective) school in a totally selective local authority, is incorrect since that would have been a statement that applied to the former Highcrest Community School, but not to the school under its new status as an Academy. The school says that the "context" issue raised by the objectors is therefore irrelevant,

and the issue of the fairness of banding in the context of selection raised by them does not apply.

16. The school's Funding Agreement states that

*"the school provides education for pupils of different abilities"*

which is in practice no different from the status which the school had prior to conversion, or that of all other Upper schools in Buckinghamshire, which are described in the LA's brochure for parents as providing education for pupils of "all abilities". Its admission arrangements for 2012 are also those of the former community school, and the same (essentially) as those of other Upper Schools in the county, in essence admitting without reference to ability and giving preference to those living in its catchment area with distance from the school used as a tie-breaker. I do not therefore agree with the school that it can say that "neither the catchment nor the status here attributed to the school is pertinent" when referring to the objection, since it has operated in 2012 as an Academy using identical admission arrangements to those of the former school. It is these arrangements that it has changed for admissions in 2013, and it cannot in my view make a case that there was effectively no status quo which might be relevant in considering the fairness or otherwise of the changes it is making. In practice, the context which the objectors describe does exist, since Highcrest has fulfilled the role locally of an Upper school since it became an Academy. So I do not dismiss the objection on these grounds, as the school wishes me to.

17. However, I agree with the school that there is nothing in the Code which would require an otherwise lawful admission policy to be overturned solely because it did not in some way not fit neatly into the local context.

18. Nevertheless, the accusation of unfairness remains, supported, the objectors assert, by research which says that unfairness would be created in the local context by the introduction of banding. I have considered the research cited by the secondary schools in their objection. While I cannot agree with the school that the section from which the objectors have used the following quote

*"Fair banding is necessarily incompatible with grammar schools and the existence of selective schools in the area would reduce the benefits"*

to support their objection, is "strongly in favour of banding systems in general", I do read it as arguing strongly in favour of schools having balanced intakes in terms of ability, and that the thrust of the work is that it is selection which can undermine these benefits. I therefore understand why the school believes that this particular piece of research "serves more to undermine some key aspects of the objection than it provides support for them."

19. The school also rejects the accusation that the introduction of banding in a selective area is unfair to other non-selective schools (who will need to admit a higher proportion of less able children) on the grounds that the concept of fairness in the Code is in relation to parents and children, not to other schools,

and I have to agree. From the evidence which I have seen, the school has not been unmindful of its local context, but has considered carefully the likely effect of the change it has introduced, as it should have done.

(iv) that the objection of the LA is internally inconsistent, arguing both that there is unfairness to those who for whatever reason do not take the test because there is no other way of getting into the school, and at the same time saying that the discretion given to governors to assign children to bands constitutes a separate unfairness. The school points out that the arrangements do have provision for exceptional cases when the banding test has not been taken, and believes that there is sufficient clarity as to how this would happen. The LA responded by pointing out that the arrangements do not explain to parents circumstances in which the banding test would be “waived” and that the wording used currently implies that sitting the test would result in an offer of a place. I have some sympathy with these points and shall return to them below.

20. The school also responded to the LA’s view that it will cause unfairness to have additional testing of pupils. It states that it would have preferred to use the results of the county’s 11+ testing but because of what it calls “obstructionism” on the part of the LA over this issue, it decided to employ a separate test. The LA has not commented further. For my own part, it is self evident that information on pupils’ ability is needed if banding is to be used, and that additional testing is inevitable if existing information cannot be used. What is important in terms of fairness is that the purpose of the testing and the use to be made of the information produced is made clear, and the testing arrangements are such that they are made as convenient to parents and as little stressful as possible for children. The school is clearly aware of the need to mitigate the impact on children of additional testing, and has gone to considerable lengths to make the existence of the banding test known to local parents and to explain its purpose and effect. I have seen no evidence that leads me to believe that the arrangements will lead to unfairness of the sort alleged.

(v) that the similarity between this objection and that of the secondary Headteachers derives from the fact that she is Chair of Governors of the school with which Highcrest has had a common catchment area previously, and whose Headteacher has acted as spokesman for the group of 11 secondary schools.

21. Although she declares this association, her objection is made in a personal capacity, and I believe that KS is entitled to have it considered as such. She contends that the test employed by the school is likely to underestimate the true ability of children whose first language is not English, or who come from families with a low socio-economic status. She bases this assertion on an analysis of the test rubric (presented orally, not read) in terms of its “readability”, and goes on to quote academic research which supports her view that even with a test of non-verbal reasoning disadvantaged children will tend to perform below their true level of ability. The school have responded by saying that they accept that all testing is flawed, including that used for selection at 11+. The difference in the situation created by the use of

tests to produce academic banding is, they say, that the test outcome in individual cases is “low stakes”, since it does not lead directly to the admission/ non-admission of the child, only to the child’s allocation to a band. Their view is that in these circumstances, having adopted a recognised test, which is as good as tests of this sort can be, it is “as good as it needs to be” for the purpose for which it is to be used.

22. I have considered these arguments in the light of what the Code has to say, and have viewed available information concerning the test which the school intends to use, and have also considered the issue of readability. Paragraph 1.31 of the Code, in its entirety, reads as follows:

*“Tests for all forms of selection must be clear, objective, and give an accurate reflection of the child’s ability or aptitude, irrespective of sex, race or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.”*

23. The first sentence is clearly to do with children as individuals, and the requirement that testing should provide an “accurate reflection” does not in my view amount to a requirement of precision. There is an error associated with any testing, and the Code recognises this. The requirement is that the test should be good enough to “reflect” the ability of the children tested. The test which the school intends to use is nationally recognised and the school has clearly decided to employ non-verbal reasoning in order to minimise linguistic effects. While the publisher’s claim that the test “is word-free and, and therefore not biased towards any social, cultural or linguistic group” may need to be viewed, as the objector states, in the context of some inevitable verbal mediation of the test itself, it is also not valid to subject orally presented material to analysis using readability formulae designed for assessing the difficulty of text when read, not when listened to. Readability formulae are in my own experience not considered to be definitive measures of the difficulty which is encountered in reading a text, since they do not take syntax or semantic complexity into account, and I believe that is a widely shared view.

24. The objector’s accusation that the test is not “a true test of aptitude or ability” (which all accept it is not, when considered as an instrument for assessing individuals, since no test can meet this standard) needs to be seen in the context in which it appears in the Code. The reference in the second sentence of paragraph 1.31 of the Code is to the test as a whole and the phrase “true test” is a reference in my view to the nature of what it seeks to test (ability or aptitude), not to its ability to act as a measure of individual ability, as employed by the objector.

25. I have no doubt that the test employed as part of the school’s banding arrangements is indeed a test of ability (and not of something else), and that it will give a reflection of ability which is accurate (if not perfect). I am persuaded by the school’s view that as a non-determinant of admission, the test they have chosen “is more than equal to the task it is being asked to perform”. It is also material (as the school has pointed out) that even if the test did result in proportionately more children performing at a lower than a higher level, the banding will automatically equalise the number of applicants in each band,



“giving an equal chance of admission which is thereafter determined on proximity”.

(vi) that it does not feel the need to comment specifically on the objection made by JB, having dealt with the point he has raised in relation to other objections. As part of the impact analysis using 2010 data mentioned above, the school also compared the ethnicity of those likely to be admitted under the previous and revised admission policies. The results of this analysis, which have been supplied to me by the school and which indicate comparable numbers of admissions from different ethnicity groups under the two policies, were shared by the school with the objector in his role as Chair of the Buckinghamshire Minority Education Concern group at a meeting in March 2012. The analysis carried out by the school does show, as it has pointed out to me, that no minority ethnic group would be disadvantaged by the revised policy. The school has responded to the general concern about any child living locally who does not secure a place under the revised arrangements by pointing out that they would be likely to obtain a place at Cressex School, an Upper school which had a common catchment area with Highcrest under the previous admission arrangements.

26. As with a previous objector, I am of the view that the concerns expressed by JB are derived from fears about the impact of the new arrangements on children placed in lower ability bands, which I will now consider.

#### (ii) Unfair disadvantage

27. In addition to the objections set out above that are to do with the fairness or otherwise of the arrangements in themselves, each of the objectors has raised a concern that the use of banding in an area where there are grammar schools will disproportionately disadvantage local children, a high proportion of whom are from ethnic minorities or are relatively socially disadvantaged. Some of the objectors have alleged that the arrangements may therefore be unfairly discriminatory and in contravention of legislation whose implications for admission authorities are set out in the Code (Appendix).

28. The objectors argue that firstly, the local population will be under-represented in the two upper ability bands of the four which the school has decided to employ for the purpose of admissions. They go on to argue that many of those who are allocated to the higher bands will also be deemed of grammar school ability and will take up places offered at local grammar schools. Those from the upper bands who do not go to other schools will therefore face less competition than those from lower bands when it comes to being admitted to Highcrest, and that since these bands disproportionately consist of disadvantaged children or those from ethnic minorities, the effect is one of unfair discrimination.

29. The school has made a number of points in response;

(i) at the point when offers of places will be made, the banding approach adopted by the school, in which the four bands are the four ability quartiles of those who have applied, automatically means that all

applicants will have an equal chance of admission, determined by proximity of their home to the school. This also means that the band to which an individual child is assigned has no impact on their chance of being offered a place, since all will have the same chance;

(ii) if the effect of 11+ selection is as stated, the chances of admission of those in the lower bands will not be improved, but they will not be worsened either. The effect would in any case be due to the selective system operated by the LA, not the school's admission arrangements;

(iii) if the school proves to be popular with parents of "grammar qualified" children, the effect could be the reverse of that alleged, showing that any such argument is speculative and "cannot carry sufficient evidential burden to defeat otherwise lawful arrangements";

(iv) any breach of equalities legislation would only occur if there was disadvantage to the individual concerned that was not justified by other considerations. Since admission from the bands gives each individual an equal chance, this would not be the case. Research cited by the objector concludes that banding systems generally tend to reduce social and racial disadvantage; and

(v) the school accepts that it will broadly be true that its revised arrangements will mean that there will be fewer pupils admitted from lower bands than under previous arrangements, but believes that this is an inevitable consequence of seeking a balanced intake. The school is also increasing its planned admission number (PAN) from 130 to 140 for admissions in September 2013, which will mitigate this effect to some extent by providing some "headroom" for the admissions which will come from the upper bands.

30. Banding is an approach which is specifically allowed under the Code, and in primary legislation. The effect of introducing it for a school that has previously provided for those children not selected for, or not choosing to attend local grammar schools, will inevitably be, in the first instance, that some lower ability children will not secure a place at the school and will be replaced by others of higher ability. The Cressex School, which has a common catchment area with The Highcrest Academy was undersubscribed for admissions in 2011. Cressex is an Upper school and very comparable to Highcrest in terms of provision. Displaced pupils from the shared catchment area are very likely to secure a place there. Although one objector has claimed that greater distances will have to be travelled by displaced children to other schools, he provided me with no evidence to support this assertion. Neither has the LA (who are best placed to evidence any such effect) made any attempt to persuade me that this would be the case.

31. At an individual level, as the school has pointed out, all children who apply to it will have the same chance of admission under the oversubscription criteria, irrespective of the ability band they are placed in. As far as the local authority's 11+ arrangements are concerned, any effect on the pattern of admissions to the school which would follow from parental decisions about

preferred schools would be not be a consequence of the school's own admission arrangements. I do not believe that the Code provides any basis for holding any such consequences against those arrangements themselves.

32. For the school to have been considered to have acted in a way which might be considered under the relevant legislation to cause actual discrimination to an individual, it is my understanding that there would have to be evidence of such likely disadvantage, for which there was no justification on the grounds that it was a proportionate means of achieving a legitimate aim. I have seen no evidence that leads me to believe that there will be such disadvantage to individuals as a result of the school's admission arrangements, and I cannot see that the schools is not pursuing a legitimate aim.

### (iii) Clarity

33. Several of the objections have raised concerns about the clarity of the banding arrangements in the school's admission policy.

- The 11 secondary schools object that “the banding process as described in the school's admissions policy is not clearly explained to parents.” They go on to state that: “The possible permutations arising from different numbers of applicants who achieve a particular score in the banding tests are complex and difficult to understand by any reader, let alone a reader with low literacy skills or limited knowledge of English. The 11 schools go on to state that: “the statement... of the school's admissions policy that “this is not a pass/fail test “ is disingenuous, as, if the school is oversubscribed, some children will find themselves rejected as a result of the test.” .The 11 schools state: “It is certainly confusing to any reader given (a) that the Admissions Code defines banding as a “form of selection” and (b), as the Highcrest policy seeks to elucidate, that a pupil's performance in the test will determine the band to which he/she is allocated and that a pupil is unlikely to be allocated a place if a certain band and adjacent bands are full.” They also complain that the means by which governors would allocate a child who has not taken the test to a band is not clear.

- The LA objects that it is not clear

a) “whether the banding of students will take place prior to the publication of the 11+ tests or subsequent to them. It is possible for there to be a substantial difference in the outcome between the two”;

b) how bands will be filled if they become undersubscribed as a result of parents accepting places at grammar schools;

c) how banding will apply to “late testers”; and

d) how admissions outside the normal admissions round will be handled and in particular how governors will exercise discretion in the case of children who have not taken the banding test.

- KS also asks for clarity concerning the way in which children will be reallocated if a band becomes undersubscribed.
- The 3 primary schools say that it is not clear at what point in the process the median score and other band boundaries will be fixed (arguing that this should take place after any withdrawals by successful grammar school pupils), that it is not clear how children not sitting the test will be allocated to bands, and that it is not clear what feedback on the test results will be given to parents.

34. The school has responded as follows;

(i) that it does not agree that the explanation given of how bands are created is difficult to understand;

(ii) that it does not accept that it is disingenuous to say that the academic banding test is not a “pass/fail” test. The test allocates children to bands, nothing more;

(iii) that the school does not wish to encourage the avoidance of the ability test by parents and that it is impossible to catalogue all the exceptional circumstances that would need to be covered by the use of governors’ discretion to allocate children to bands;

(iv) that the date by which information would be sent to parents, and the procedure for re-allocation to bands that become undersubscribed are covered in the school’s admission arrangements;

(v) that the school has agreed to make arrangements for those moving late into the area, in discussion with LA officers, and uses wording suggested by them in the arrangements. The school has forwarded notes of a meeting which took place on 21 October 2011 which confirm this;

(vi) that the process of governor discretion is already covered adequately in the published arrangements, and that where a new applicant is for example added to the school’s waiting list it will not be known which band or bands might next have a vacancy, so there could be no opportunity for covert selection; and

(vii) that the objections raised by the three primary schools are either covered in the published arrangements, or in responses to other objections.

35. I have read the policy carefully and did not find it difficult to understand. Whilst I accept that the process of banding could be described as complex that does not necessarily mean that it lacks clarity. It is clear for example that the bands will be created using the scores on the banding test of those who make an application to the school. This is the appropriate means for achieving a balanced intake representative of those who apply, which is one of the forms of banding permitted by the Code. The approach put forward by the three primary schools, of creating bands after any withdrawals of children who prefer the offer of a place at a local grammar school, would not result in

banding permitted by the Code. I believe it is helpful, and a useful clarification, that the arrangements explain that academic banding tests are not “pass/fail” tests.

36. I agree with the school that all the circumstances in which exceptional arrangements might need to apply for allocating a child to a band cannot be covered in published admission arrangements, and I think they are not acting unreasonably by stating that the banding test would be part of the arrangements except in some such exceptional circumstances. I agree however with the point made by the LA in subsequent correspondence concerning its objection that the arrangements should make it clear that if the school were undersubscribed, the banding test would have no relevance to admissions.

37. The appendix to the school’s published arrangements makes it quite clear that the results of banding tests will be sent to parents before the final date for the submission of school preferences (31 October). It also sets out a procedure for re-allocating children to bands for the purpose of making admissions if one or more bands become undersubscribed. However, I think that since this procedure has the effect of directly deciding which children are admitted under the relevant circumstances, it would help the overall clarity if it were made part of the admission arrangements themselves, and not included as an annex to them.

38. I do not believe that it is essential for late applicants, or those joining a waiting list, to be allocated to bands at all, since the small numbers of children involved would not result in the balance of admissions being significantly altered, and that it would therefore be acceptable if such children were ranked solely against the school’s other oversubscription criteria. The school has told me in correspondence that it wishes to make the arrangements clearer by stating that in-year admission applications made for places for the second term of Year 8 and subsequently will be considered without reference to banding. I believe that the school wishes to do everything that it can to ensure that admissions conform to the intended banding profile, and that it is helpful, and not inappropriate, for other evidence to be taken into account when a child has for whatever reason been unable to take the banding test, although I do think, again, that the wording of the arrangements could be improved, and I shall return to this below.

#### (iv) Consultation

39. DB has objected

a) that the school has not carried out any detailed consultation with other schools that will be affected by the school’s banding policy; and

b) that the school made no effort to consult with the extended community to explain the objectives and implications of its revised admissions arrangements.

40. The school has responded that it notified “all relevant bodies and the LA”

about the proposed changes to its admissions policy before posting the proposed policy on its website on 11 November 2011. Of the 55 responses received before the consultation closed on 27 January 2012, 15 were from other local schools, and a number were from individuals. The governors received a report on and gave full consideration to these responses prior to making their decision.

41. During the consultation, the school received a number of comments concerning the verbal reasoning test that was originally proposed for determining banding arrangements. In the light of these comments, it decided to use a non-verbal reasoning test for determining banding arrangements. DB has objected that the alternative banding tests have not been subjected to the required consultation, and this objection is also raised by the three primary schools. Comments were also made by some local schools during the consultation that the enlarged catchment area which was proposed would impact negatively on their intake. The school therefore decided to dispense with any catchment area and use the criterion of distance from the parental home to the school instead. Again, the three primary schools object that there has been no consultation on the introduction of this change.

42. The purpose of all consultation is to receive the views of those consulted. There is no requirement to accept these views, and no restriction on rejecting them. The body making the decision, however, is at least informed of the views of relevant parties prior to making its decision. If it chooses a new course of action as a result of what it has learned, it must inevitably do so at the end of the period of consultation, and if, as in this case, that period is fixed by statute there may be little time left for further consultation on a second set of proposals. The school consulted for a period which was within the required time-frame, and which lasted longer than the minimum requirement of 8 weeks. It may have been possible for the governors to give their full consideration to the consultation feedback sooner than they did, and for there to be a short period of further consultation before the deadline of 15 April for the arrangements to be determined by them, but this is not a requirement of the Code. The school believes that it met all the requirements set out in paragraphs 1.44 and 1.45 of the Code concerning consultation, and I agree.

#### (v) Removal of the catchment area

43. The three primary schools have objected that the school's arrangements are in contravention of paragraph 1.14 of the Code, which states:

*“Catchment areas must be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school”*

44. The three schools object that by removing a catchment area, just as by having an enlarged one in the original proposals, the school's arrangements offend the above paragraph because the school is still “not coordinating a reasonable catchment area with neighbouring schools”.

45. Read in isolation, paragraph 1.14 might appear to require all schools to

have a catchment area, and it seems that the three schools have thought so. However, it is a paragraph which is one of a number which describe common oversubscription criteria employed by schools. Paragraph 1.10 makes it clear that “it is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances”. There is no requirement for the school, or for any school, to have a catchment area as part of its admission arrangements. The fact that by not doing so the school is falling out of line with the established pattern for secondary schools in the county does not alter this.

(vi) New selection

46. The 11 secondary schools, the three primary schools, the LA, and RH all refer to paragraph 1.9d of the Code and its statement that schools must not introduce any new selection by ability. Since paragraph 1.25 of the Code refers to banding as a form of selection, they argue that its introduction must be in breach of paragraph 1.9d.

47. The Code does not refer to banding simply as “a form of selection”, but as “a permitted form of selection” (paragraph 1.25). The reason for this is that banding is specifically sanctioned by section 99 and described in section 101 of the Act . It is one of four forms of selection by ability that are sanctioned by section 99 of the Act, the others being arrangements that were in place prior to the 1997-8 school year, selection for entry into post-compulsory education, and selection of the whole intake by existing grammar schools. The 2006 Act removed the stipulation that the introduction of banding was a prescribed alteration to a school, requiring statutory notices to be published and determined. Reading these provisions together, I have no doubt that the introduction of banding is sanctioned and envisaged by legislation, and that the reference in the Code at paragraph 1.9d to “new selection by ability” does not apply to the introduction of banding.

(vii) Information requested by the school

48. The LA has pointed out that the form which the school asks parents to complete in order to enter the ability banding test arrangements seeks information concerning siblings already at the school. This information is already collected from all parents through the Common Application Form.

49. Paragraph 2.4 of the Code requires admission authorities to collect only additional information which has a direct bearing on the application of oversubscription criteria. Since this is not additional information, it should not be included in the form used by the school.

50. The school have already accepted that that is the case.

**Conclusion**

51. I have concluded that the objection that the arrangements are unfair is unfounded. I have set out my reasons for this

(i) concerning the effect on pupils living near the school, in paragraphs 14 and 15 ;

(ii) concerning the effect of introducing banding into a selective authority, in paragraphs 17,18 and 19;

(iii) concerning fairness to disadvantaged groups, in paragraph 20;

(iv) concerning the verbal reasoning test employed by the school, in paragraphs 23,24 and 25.

I do not uphold this part of the objection.

52. I have concluded that the objection that the arrangements will create unfair disadvantage are unfounded. I have set out my reasoning in paragraphs 30, 31 and 32.

I do not uphold this part of the objection.

53. I do not agree, for the reasons set out in paragraphs 35 to 38, that the arrangements are generally unclear. However, there are aspects of them which do not meet the requirements of the Code concerning clarity (see paragraphs 36, 37 and 38). I therefore partially uphold this part of the objection.

54. Concern was expressed about how exceptional cases (who would be assigned to bands using information other than banding test results), and those such as children moving into the area after the tests have been taken, would be treated. My understanding is that the school wishes to remain as faithful to the principle of banding as possible, and agree that it is not inappropriate for the school not to include wholesale dispensations from the requirement to sit the banding test, and also to use alternative information to achieve banding when it is appropriate and possible to do so. However, I do think the arrangements could be more clearly worded, in the following ways:

(i) by including a statement in the arrangements themselves that local children who miss the test but who can provide evidence of a satisfactory reason for doing so (such as illness, or an unavoidable medical appointment, or because they moved into the area after the test dates) will be allocated to a band using alternative evidence;

(ii) by more explicitly stating that alternative evidence would (not “could”) include the Buckinghamshire 11+ score and SAT scores, if these are available;

(iii) by including a statement which makes it clear that the banding procedure is an oversubscription criterion, and that if the school is not oversubscribed the results of banding tests will not be employed;

(iv) by including a statement that makes it clear that banding applies only to Year 7 admissions and that admissions into other year groups will be governed by the remaining oversubscription criteria in the event of



oversubscription. The school have suggested that they would wish to extend the period within the arrangements for which the Year 7 waiting list is held to four terms – that is until the end of the first term in Year 8. While the school may wish to do this, and may have good reason for doing so, this would be a variation to the determined arrangements and should, in the absence of a request to make a variation on the grounds of a significant change in circumstances, be the subject of consultation when the school next considers whether to make changes to its arrangements.

55. For the reasons set out in paragraph 42, I do not find that the consultation carried out by the school prior to determining the arrangements was inadequate. I do not uphold this part of the objection.

56. For the reasons set out in paragraph 45, I do not agree that the school's decision to dispense with a catchment area is in contravention of the Code. I do not uphold this part of the objection.

57. For the reasons set out in paragraph 47, I do not agree that the introduction by the school of ability banding constitutes the introduction of a new selection by ability which is not permitted by the Code. I do not uphold this part of the objection.

58. For the reasons set out in paragraph 49, I am of the view that some of the information requested by the school in a supplementary form is not permitted. I uphold this part of the objection.

59. The four forms of clarification set out in paragraph 54 have all arisen from the objections which have been made. I have also considered the arrangements as a whole, and am of the view that there are further matters which should be clarified in order for the arrangements to be compliant with the Code.

60. Firstly, an introductory statement in the arrangements says "The Highcrest Academy seeks a balanced and all-ability intake which is representative of the community and of the ability of those applying each year". Banding is permitted which seeks to ensure that a school's intake is representative of either

(i) the full range of ability of applicants for the school;

(ii) the range of ability of children in the local area; or

(iii) the national ability range.

However, it must be one of these three, and it is clear from the rest of the arrangements that the school intends it to be the first. In order to obtain an intake that was representative of the abilities in the local community, the school would have to employ additional techniques, but it could do so, and so alter the children to whom places are offered. While the intention of the current wording is understandable, it is potentially confusing in the context of permitted forms of banding, and should be amended so that it is clear that the

ability of pupils admitted will be representative of the abilities of those who apply for a place at the school.

61. Secondly, the school describes in an annex, under the heading “banding procedure” the way in which, if a band becomes undersubscribed, a place from within it which could have been offered will be allocated to a child in an adjacent band. I am of the view that this procedure forms part of the admission arrangements, since it describes how places will be offered to individual children, and that it ought to be included in the admission arrangements themselves.

62. Thirdly, also in the introduction to the arrangements, there is currently the following statement: “children will be offered a place if they meet the admission criteria set out below....” This implies that a place will be offered if the procedure is followed, and should be amended to make it clear that children will be considered for places and that if the school is oversubscribed places will be allocated using the stated oversubscription criteria.

63. In each of the matters in which I am of the view that the clarity of the arrangements does not meet the requirements of the Code, I have indicated the changes that need to be made to achieve compliance.

### **Determination**

64. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objections which have been made concerning the fairness of the arrangements, those which allege that they create unfair disadvantage, those which allege inadequate consultation, those which allege that new selection contrary to the Code is being introduced, and that which objects to the removal of a catchment area. I uphold the objection concerning information requested by the school and I partially uphold the objection concerning the clarity of the admission arrangements determined by the proprietor.

65. I have also considered the arrangements in accordance with section 88I (5). I determine that they do not conform with the requirements relating to admission arrangements, as set out in paragraphs 60, 61, and 62 of this determination.

66. By virtue of section 88K (2), the adjudicator’s decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 23 August 2013

Signed:

Schools Adjudicator: Dr Bryan Slater