Office of the Schools Adjudicator

DETERMINATION

Case reference: **ADA3267**

Referrer: **Two members of the public**

Admission Authority: **The Universities Schools Trust, East London for the Royal Greenwich Trust School**

Date of decision: **26 June 2017**

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for September 2018 determined by the Universities Schools Trust, East London for the Royal Greenwich Trust School.

I find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in 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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 1 September 2017.

The referral

1. The admission arrangements for September 2018 (the arrangements) for Royal Greenwich Trust School (the school) an academy school for boys and girls aged 11 to 19 were brought to the attention of the adjudicator by two members of the public. The referrals concerned the use of banding in the arrangements. The referrals also raised the same concerns with the admission arrangements of other secondary schools in the Royal Borough of Greenwich (the local authority) which use banding and these are considered in separate determinations.

2. The parties to the case are the local authority, the governing body of the school, the Universities Schools Trust, East London (the trust) and the referrers.

Jurisdiction

3. The referrers submitted objections to the determined arrangements for 2017 for the school on 22 March and 16 May 2017. The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) required objections to the 2017 arrangements to have been submitted by 15 May 2016. The objections were therefore outside of my jurisdiction. These referrals, however, brought the 2018 arrangements for the school to my attention; they are the same as those for 2017 other than the necessary alterations to dates. The 2018 arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the governing body on behalf of the trust, which is the admission authority for the schools, on 26 May 2017 (some three months after the deadline of 28th February 2017 set by the Regulations for the determination of admission arrangements for 2018). As it appeared that the arrangements did not, or may not comply with requirements relating to admission arrangements I have used my power under section 88I(5) of the Act to consider the 2018 arrangements.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

    a. the referrals dated 22 March and 16 May 2017;

    b. the school's response to the referrals and supporting documents;

    c. the school's response to my enquiries;

    d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;

    e. copies of the emails documenting the determination of the arrangements by Chair's action; and

    f. a copy of the determined arrangements.

6. I have also taken account of information received during and after a meeting convened by my Adjudicator colleague on 18 May 2017 at Woolwich Town Hall (the meeting). The meeting was attended by the local authority, representatives of two maintained schools and representatives of five of the six academy trusts, including representatives of the Universities Schools Trust, East London, which use similar admission arrangements for schools situated in the local authority area.

The Referrals

7. Banding has been used for many years as part of the admission arrangements of many of the publicly funded secondary schools located within the Royal Borough of Greenwich. These two referrals covered all the schools using banding, another referral was restricted to the community schools and one voluntary controlled school for which the local authority is the admission authority. Determinations ADA3260, ADA3265, ADA3266, ADA3268 and ADA3269 deal with the referrals for the other schools as separate determinations are required for each admission authority.

8. The referrers said it was difficult to find details of how the banding process operated and questioned whether the process met the requirements set out in paragraphs 1.25, 1.26 and 1.27 of the Code.

Other Matters

9. When I considered the arrangements as a whole in addition to concerns about banding, it appeared to me that they did not, or may not, meet the requirements of the Code in the following ways:

    - The arrangements for waiting lists for 2018 do not state "*that each added child will require the list to be ranked again in line with the published oversubscription criteria*." This is a requirement of paragraph 2.14 of the Code.

    - Paragraph 2.17 of the Code says "*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group*." This requirement does not appear to be met in the 2018 arrangements.

Background

10. Banding has been a feature of the admission arrangements for most secondary schools in Greenwich for many years. Prior to 2017, children attending primary schools in the local authority were placed into five ability bands based on scores obtained in tests taken in Year 5. An increasing number of applications were being received for children who did not attend primary schools within the local authority. These children would not have taken the test and were placed in bands based on teacher assessment.

11. In its consultation on a new system of banding for 2017, the local authority recognised that: the placing of children into the five bands was not completely consistent, children were being required to take an additional test and the cost of testing was increasing. Following this consultation, the local authority decided to change the system of banding used for 2017 in the four maintained schools. The admission authorities for the school and the other five academies which were referred to the adjudicator also decided to adopt the same system.

12. The system for 2017, as described on the school's website, had three ability bands and the children are placed in these bands on the basis of Year 5 teacher assessment. The first band was described as "*exceeding national standards",* the second as *"working at national standards"* and the third as "*working towards national standards*". The first and second band would both have 40 per cent of the places allocated to them with the remaining 20 per cent being allocated to the third band.

13. If the school is oversubscribed then places are allocated to children in each band (after places have been allocated to children with statements of special educational needs and with education, health and care plans) using oversubscription criteria which can be summarised as:

    1. Looked after and previously looked after children.
    2. Siblings of children who will still be on roll at the school.
    3. Children or their immediate family member with medical or social needs.
    4. Other children based on proximity to the school.

14. At the meeting it was apparent that all of the schools present supported the principle of using banding to obtain a balanced distribution of abilities in each school.

Consideration of Case

Banding – Requirements of the Code

15. The Code sets out the overall principles behind setting admission arrangements in paragraph 14: "*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated*." The Code also defines admission arrangements as "*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*."

16. In paragraph 1.47 the Code says "*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website*".

17. Paragraph 1.25 of the Code says "*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."

18. In the subsequent paragraph 1.26, the Code says "*Admission authorities' entry requirements for banding **must** be fair, clear and objective. Banding arrangements which favour high ability children that have been continuously used since the 1997/98 school year may continue, but **must not** be introduced by any other school*." While paragraph 1.27 says "*The admission authority **must** publish the admission requirements and the process for such banding and decisions, including details of any tests that will be used to band children according to ability*."

Banding – Publication and clarity

19. There is a clear requirement in paragraph 1.27 of the Code that admission authorities **must** publish information about any banding processes in their admission arrangements and paragraph 1.26 requires that these **must** be clear. This is in addition to the wider requirements in paragraph 14 of the Code that arrangements **must** be fair, clear and objective. When I looked at the school's website I easily found the admission arrangements for 2018.

20. In the arrangements it says: "*Note: Royal Greenwich Trust School will use Royal Borough of Greenwich's ability banding as part of its secondary admission arrangements for entry into Year 7. There will be three ability bands - Band 1, Band 2 and Band 3 (Band 1A being the most able children and Band 3 the least able), with 40% of children in Band 1, 40% in Band 2 and 20% in Band 3. Further information is available from Royal Greenwich's website at www.royalgreenwich.gov.uk/admissions".* This does not explain how applicants are allocated to bands. The link takes the reader to Royal Greenwich's website and following the links there to the admissions booklet for 2017 would take the reader to individual links for academies and so back to the school's admissions arrangements.

21. Exploring the arrangements for community schools in Royal Greenwich there is a heading "*Admission arrangements*" under which is a link "*Determined admission arrangements 2018/19*". This leads to an eight-page document, the first five and three quarter pages apply to nursery and primary schools, the next one and a half refer to secondary schools and the remainder to post-16 admissions.

22. The only reference to banding in this document is in the second sentence in the section on secondary schools "*All Royal Greenwich community and voluntary controlled schools will divide this [published admission] number into three ability bands to provide a balanced intake of children with differing abilities*." The remainder of the secondary school section sets out the published admission numbers for the four schools, oversubscription criteria and notes on co-ordination and appeals.

23. Using the link to the local authority website set out in the school's

arrangements would not take the reader to further useful information about banding. The school have commented that it recognises that it would have been helpful for parents had it published more detailed information, particularly in relation to Year 5 assessments.

24. While academy trusts in their roles as admission authorities may collaborate with other admission authorities and use similar arrangements to the local authority, it remains the trust's responsibility to consult on any changes, to determine and publish arrangements and ensure that they comply with the Code.

25. I find that the trust has not met the requirements of paragraph 1.47 in the Code because the admission arrangements for 2018 published on its website are incomplete. Because the published arrangements are incomplete, they are not clear and so do not comply with paragraphs 14, 1.26 and 1.27 of the Code.

Banding – Objectivity

26. There are three forms of banding set out in paragraph 1.25 of the Code, the published arrangements state that the school has adopted the local authority's fair banding process. The school states that "*The rationale behind our banding arrangements was to produce an intake* [for each school] *that is representative of the national ability range (paragraph 1.25c of the Code). This was based on Government predictions of 85% of pupils attaining the expected standard or above under the new framework. We have since confirmed that we recognise that the information obtained from the Year 5 teacher assessments shows that the distribution across the three bands is not in line with these earlier predictions*." This mirrors the wording used by the local authority to explain the rationale used. Neither the local authority nor the school has explained to me why it thought that there would be an even split between those meeting the standard and those exceeding it given that there was no suggestion by the Government that this would be the case nationally. Even if there had been such a suggestion, this would not seem a sound basis for assuming a particular split in one part of the country. The school appears to have followed the local authority's approach without questioning it.

27. There appears to me to be a fundamental flaw in the school's banding structure. The banding process used before 2017 appears to have used norm-referenced assessment. Children were put in a ranked order by a test score and it would always be possible to identify the top 20 per cent and then the next 20 per cent and then the next quintile and so on. Variations in the size and ability of each cohort taking the test, or the difficulty of the test, would not matter, it would always be possible to identify the quintiles. The score required to be in any quintile each year could be different as could the number of children within each quintile. More sophisticated mathematical techniques involving standardisation could be used but there would always be five equally sized quintiles with clear boundaries.

28. The current banding process uses a criterion-referenced assessment. A common form of criterion referenced assessment is the driving test. There is no pre-set proportion of candidates who will pass the driving test, candidates are either competent to drive, or they are not. Examiners do not have to pass a previously agreed proportion of candidates. In this case, a child is either "*exceeding national standards", "working at national standards"* or "*working towards national standards*", there is no requirement for a pre-set proportion of children to be assessed as meeting each description. As cohorts of children vary in ability and number, it is not possible to predict in advance the proportion or how many of the children will be placed in each band although this is what the school has tried to do by setting the 40:40:20 distribution across the three bands.

29. With norm-referenced assessment, it is always possible to fit the children into pre-determined sized bands. With bands based on criterion-referenced assessment I do not consider it possible to pre-determine the size of the bands.

30. The Code requires that the banding process is objective. For a teacher of a Year 5 child to state that the child is either "*exceeding national standards", "working at national standards"* or "*working towards national standards*", the teacher must know what those standards are. It is also necessary for assessments made by different teachers in different schools to be consistent.

31. There is a national framework for assessment at the end of key stage 2. This is based on what children in Year 6 can do; for example, "*The pupil can write for a range of purposes and audiences using paragraphs to organise ideas*". In the DfE publication "*Interim teacher assessment frameworks at the end of key stage 2*" published in July 2016, it says "*This statutory interim framework is to be <u>used only to make a teacher assessment judgement at the end of the key stage following the completion of the key stage 2 curriculum</u>* [emphasis by underlining added]*. It is not intended to be used to track progress throughout the key stage*." This indicates that the national framework for Year 6 children is inappropriate for assessing Year 5 children, although this is what the school, by virtue of following the local authority's practice, attempts to do.

32. It is clear why the use of the national framework for Year 6 assessment is inappropriate for Year 5 children. A child may not be able to demonstrate a skill in Year 5, but could demonstrate it by the end of Year 6 after a further year of education. It cannot be expected that children in Year 5 can do everything that is expected of them at the end of Year 6. Assessing children in Year 5 against Year 6 standards is bound to produce lower proportions of them attaining the expected levels. There are no national standards for Year 5 children to be assessed against and it is the national ability profile which the school,

by virtue of following the local authority's practice, has said it wants to reflect in the bands.

33. The key stage 2 teacher assessment framework has three levels of attainment in English writing which are: "*working towards the expected standard*", "*working at the expected standard"* or "*working at greater depth within the expected standard"*, but only one level for English reading, mathematics and science which is "*working at the expected standard"*. The DfE publication "*2017 Assessment and Reporting Arrangements (ARA)*" explains how a combination of teacher assessment in English writing and test scores in English reading and mathematics are combined to produce the end of key stage assessment of children as "*meeting the expected* standard" and "*achieving above the expected* standard". In contrast it is not clear how just teacher assessment is used to put a Year 5 child in one of the three bands. For example, if on the basis of teacher assessment at the end of Year 5, a child was "*working at greater depth within the expected standard"* in English writing, but not "*working at the expected standard"* in one or more of the other subject areas which band would they be put in? There would appear to be no guidance on this in the arrangements or elsewhere.

34. I asked the school to comment on the objectivity of the teacher assessment used; the school stated that it "*is content that sufficient robustness does already exist within the wider system to ensure that Year 5 assessment is objective and will provide the Local Authority with the data it requires to inform any banding arrangements*". I have taken this to imply that the school relies on the local authority to administer the banding process and to ensure the assessment is objective. The local authority's response on this question was a description of its statutory duty to moderate end of key stage 2 teacher assessment of English writing and the support it offers to schools for other moderation activities. The local authority has not provided me with any specific detail about how Year 5 teacher assessments are moderated. It appears to rely on transfer of understanding from one statutory moderation process in one subject area which is specific to Year 6 where there are national standards and optional moderation activities, which teachers may or may not participate in. I am not satisfied that this can give consistent teacher assessment across all subject areas in Year 5 where there are no national standards to be moderated against.

35. There are other considerations about the fairness and objectivity of the form of assessment for children who are new to a school, are in an independent school which does not follow the national curriculum or attend a school in an area where end of key stage 2 teacher assessment is not used in Year 5. I would, however, only need to consider the implications for such children if I was satisfied that the assessment used was sound for the majority of children.

36. I find that the method of assessing children for the purpose of putting them in bands is not objective. The arrangements do not therefore

comply with paragraphs 14 and 1.26 of the Code.

Banding - Fairness

37. The referrers described perceived consequences of a mismatch between the proportion of places available within each band and the proportion of applicants meeting the description of that band. One referrer said "*Historically, a band 3 child* [that is in the lowest 20 per cent] *applying for Eltham Hill school would have been allocated a place if their home was up to 7.7km away. This year, children living half that distance from the school have missed out on a place because so many more children have been assessed as being in the lowest band. Looking at 2016 test data for Greenwich, nearly 40% of children are applying for 20% of the borough's Y7 places*." None of the parties have questioned this statement. The second referrer said "*the cohort* [for admission in 2017] *were teacher assessed as follows: 28.4% Band 1; 47.8% Band 2; 23.8% Band 3*." and claimed that with 40 per cent of places being available for about 28 per cent of the children it was easier to find a school place in the first band and that this favoured high ability children.

38. I noted above that the school and the local authority had referred to Government predictions that 85 per cent of children would attain the expected standard or above under the new end framework. The Department for Education (DfE) publishes school performance tables. These show that in 2016 across England 53 per cent of children met the expected standard when they left primary school and five per cent were achieving at a higher standard, a total of 58 per cent. Forty-two per cent must therefore be achieving below the expected standard, although this figure is not reported in the tables. For primary schools in Greenwich the figures were 64 per cent, 10 per cent and 26 per cent respectively. These figures and those for the three neighbouring boroughs are tabulated below.

Borough	Achieving at a higher standard %	Meeting the expected standard %	Not meeting the expected standard %
Greenwich	10	64	26
Lewisham	6	56	38
Bromley	9	67	24
Bexley	6	59	36
England	5	53	42

39. The proportion of places allocated to each band by the local authority is not representative of "*the national ability range*" nor of "*the ability range of children in the local area*". These are two of the permitted forms of

banding set out in paragraph 1.25 of the Code. The third is "*the full range of ability of applicants for the school(s)*".

40. I asked the local authority what proportion of the children in the 2017 intake had been assessed as being in each band. The figures provided by the local authority are shown in the table below. They do not reflect the 40:40:20 pattern of the bands, nor do they follow the pattern seen in the end of key stage 2 assessment of the previous cohort. It is in the third band that there is the best match between the pre-set band size, the end of key stage 2 assessment in 2016 and the 2017 teacher assessment.

Band	1	2	3	Not Known
Proportion %	25.9	45.1	21.4	7.5

41. While one of the referrers used the radius within which offers were made at one school to assess fairness it seems to me this could reflect on the geographical distribution of applicants, the size of the cohort, an outlying sibling or looked after child rather than the banding system.

42. I sought to assess whether children in any band were adversely affected by, or disproportionately benefit from, the mismatch between the proportion of places allocated to each band and the number of children assessed as being in that band by their teachers. In order to do so, I asked the local authority to tell me the proportion of children who were assessed as being in each band who were offered their first preference school. The figures supplied to me are shown in the table below.

Band	1	2	3
Offered First Preference %	65.6	64.0	61.9

43. From these figures it appears that in 2017 a child was slightly more likely to be offered a place at their first preference school if they are in the first band and least likely if they are in the third band. However, the differences are small and I cannot conclude from them that the banding system will lead to unfair outcomes for children assessed as being in any band in 2018.

Other Matters

44. I wrote to the school to raise two other matters with them. I am setting out the following findings to help ensure that amendment does comply with the Code.

45. The arrangements for 2018 do not make clear as required by paragraph 2.14 of the Code "*that each added child will require the list*

to be ranked again in line with the published oversubscription criteria." The school did not comment on this point. The arrangements do not conform with the Code and the Code requires that they are amended.

46. Paragraph 2.17 of the Code states "*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group*." The school commented that they recognise that a link to the local authority's website which it relies on to provide this information is insufficient explanation and that it would have been helpful to publish more detailed information. The requirement of paragraph 2.17 is not met in the 2018 arrangements.

Summary of Findings

47. I am in no doubt that the representatives I met of the schools support the principle of banding in order to produce an intake with a balance of ability. Banding is a permitted form of selection, but it must comply with the requirements of the Code.

48. The admission authority for the school appears to have adopted the admission arrangements determined by the local authority for its community and voluntary controlled schools without questioning whether or not they met the requirements of the Code.

49. The teacher assessment used to allocate Year 5 children to bands refers to national standards. The only national standards are those for children in Year 6. I have set out above the issues arising from using the assessment framework used for Year 6 children at the end of the Key stage with children in Year 5. There is also no formal system to moderate between schools to ensure consistency of assessment across all schools. The assessment is not objective and the arrangements do not comply with paragraphs 1.26, and 14 of the Code.

50. The structure of the bands is flawed and not representative of the national ability range, the local ability range or the range of ability of applicants for the schools and so it does not comply with paragraph 1.25 of the Code.

51. While the banding process does not meet the requirements of the Code, the band that a child is put in does not appear to have a great effect on the likelihood of them being offered their most preferred school. No ability group appears to be favoured or disadvantaged by the system.

52. The school has not made the statement regarding ranking waiting lists required by paragraph 2.14 of the Code. It has not made the statement regarding admission out of the normal age group required by paragraph 2.17 of the Code.

53. At the meeting it was acknowledged that the banding system used by schools in the local authority area did not comply with the Code. A concern raised at the meeting was the timescale to revise the

arrangements to give effect to my determination.

54. Paragraph 3.1 of the Code says "*The Schools Adjudicator **must** consider whether admission arrangements referred to the Adjudicator comply with the Code and the law relating to admissions. The admission authority **must,** where necessary, revise their admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by **28 February** following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator. An Adjudicator's determination is binding and enforceable*." All the admission authorities were asked to write suggesting what they considered a suitable timescale for them to revise its arrangements. The school made no suggestion of a date, however, the local authority put forward 1 September 2017 and I am prepared to agree to this date.

Determination

55. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for September 2018 determined by the Universities Schools Trust, East London for the Royal Greenwich Trust School.

56. I find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

57. 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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 1 September 2017.

Dated: 26 June 2017

Signed:

Schools Adjudicator: Tom Brooke