



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3570

Objector: Calderdale Metropolitan Borough Council

Admission authority: The Trinity Multi Academy Trust, for Trinity Academy, Sowerby Bridge, Calderdale

Date of decision: 15 August 2019

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by The Trinity Multi Academy Trust for Trinity Academy Sowerby Bridge, Calderdale.

I have also considered the arrangements in accordance with section 88I(5) and find there are other 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 I specify an alternative timescale. In this case, I determine that the arrangements must be revised as quickly as possible, and in any event before the date upon which parents are required to register their children for the banding assessment which, according to the supplementary form I have been provided with, is 13 September 2019.

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 Calderdale Metropolitan Borough Council, (the objector), about the admission arrangements (the arrangements) for Trinity Academy Sowerby Bridge (the school), a mixed, non-selective secondary school for pupils aged 11 – 18 years for September 2020. The objection is to the changes made to the

school's admission arrangements for 2020. The objector considers that the adoption of banding is unreasonable because it will operate effectively to prevent some local pupils obtaining a place at the school; the selection of feeder schools is unreasonable and will operate to cause unfairness to local children; the arrangements are unclear because they are too complex for parents to understand; and the operation of the waiting list is unclear.

2. The local authority (LA) for the area in which the school is located is Calderdale Metropolitan Borough Council. The LA is the objector. Other parties to the objection are the Trinity Multi Academy Trust and the governing board of the school. The Church of England Diocese of Leeds has provided information for the purposes of this determination but is not formally a party because the school has not been designated by the Secretary of State as a school of religious character.

Jurisdiction

3. The terms of the Academy agreement between the multi-academy trust 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 Trinity Multi Academy Trust, which is the admission authority for the school, on that basis. The objector submitted an objection to these determined arrangements on 7 May 2019. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

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. a copy of the minutes of the meeting of the Multi Academy Trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 7 May 2019 and supporting documents;
- d. a map of the catchment area for community secondary schools, including the catchment area for the school's predecessor school, Sowerby Bridge High School;
- e. The LA's prospectus for admissions in September 2019;
- f. the representations of the Trinity Multi Academy Trust and the school;
- g. information provided by the Church of England Diocese of Leeds;
- h. confirmation of when consultation on the arrangements last took place; and

- i. Determinations ADA2965/2970/3036 relating to Trinity Academy Halifax, which I have considered because they relate to the adopting of banding by the flagship school of the Multi Academy Trust.

The Objection

6. I have summarised the key points of the objection below. They are as follows:
 - The adoption of banding does not equate to the need for places in the local area, and will not enable places to be offered at the school for late applicants, applicants who have not been offered a place at schools for which they have expressed a higher preference and parents who have not expressed a preference for any school. Traditionally, under the school's previous arrangements, places were offered to these applicants, and this has been essential to ensure that the LA is able to offer sufficient school places to its residents.
 - The feeder schools selected are not all local schools, and are already feeder schools for other secondary schools. There is a risk that applicants who live in the local authority wards adjoining the school will not be able to get a place at the school, and will have no alternative provision.
 - The feeder schools (with one exception) are all Church of England Schools. There is a large local Muslim community, and the LA is concerned that local Muslim families will perceive that their children are unlikely to be offered a place at the school.
 - The arrangements are too complex for parents to understand.
 - The operation of the waiting list is unclear, as there will be four waiting lists.
7. The objector cites the following paragraphs of the Code, which are all relevant to the objection.
8. Paragraph 14 of the Code which states that: *"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"*.
9. Paragraph 1.8 of the Code which states that: *"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"*.

10. Paragraph 1.26 of the Code which states that: *“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”*.

11. The objector considers that school’s arrangements fail to comply with these paragraphs of the Code, and could be *“detrimental to the communities served by the predecessor school, namely Sowerby Bridge High School”*.

12. Other paragraphs of the Code which are relevant to the objection are paragraphs 1.15 which provides that *“Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds”* and paragraph 1.32(c) of the Code which requires that: *“Admission authorities **must** take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place”*.

Other Matters

13. Having considered the arrangements, I was concerned that they did not conform to the Code for reasons which were not raised in the formal objection. These were as follows:

- a) The arrangements appeared to be unclear in relation to what the *“alternative assessment” for children* in receipt of an Education, Health and Care plan (EHC) and *“children who are in public care”* which the arrangements refer to is comprised of. Paragraph 14 of the Code (set out above) requires that the practices and the criteria used to decide the allocation of school places must be clear.
- b) The arrangements did not appear to set out the process for requesting admission out of the normal age group. Paragraph 2.17 of the Code requires that *“admission authorities **must** make clear in their admission arrangements the process for requesting admission outside of the normal year group”*.

Background

14. The school is a mixed non-selective secondary school for pupils aged 11 – 18 years. It is on the former site of the all-boys Sowerby Bridge and District Secondary School, which opened on 7 May 1910, and which later became Sowerby Bridge Grammar School and subsequently Sowerby Bridge High School, which was a local authority maintained school. In 2017 the school became an academy and was re-named Trinity Academy Sowerby Bridge. It is part of the Trinity Multi Academy Trust (the MAT). The PAN of the school is 180. The LA maintained school which it replaced was assessed by Ofsted as being Inadequate, and the MAT is clearly taking steps to turn this around. There was an improvement in the school’s results last year, and the school is committed to making further improvements.

15. The Trinity MAT comprises Trinity Halifax (rated Outstanding), The Maltings (Requires Improvement), Saint Chad's Primary (not yet rated), Ackroydon Primary School (not yet rated, but the school, it has replaced was rated Good) and Cathedral Academy (not yet rated). Trinity Academy and Saint Chad's are both designated Church of England faith schools. The MAT's website states that, "*When Trinity Academy Halifax opened in 2010, the plan was to address a decade of underperformance at secondary school level. Since then the academy has been rated as 'outstanding' twice. It has also established the **Trinity Teaching School Alliance** and the **West Yorkshire Maths Hub**, both of which have helped to raise pupil performance in hundreds of schools across the country.... Our Church of England MAT is open to schools of all faiths and none*".

16. When the school first joined the MAT, it originally retained the arrangements which were in place for its predecessor school. However, the school has determined arrangements for admission in 2020 which are very different. The arrangements formerly comprised a catchment area. The new arrangements comprise banding and feeder schools. The arrangements set out information about how the banding process will operate as follows:

"Admitting children of all abilities

Our aim is to ensure that our intake is representative of the full ability range and exactly matches the ability profile of the children applying. To achieve this, all applicants (by the deadline) are invited to take a non-verbal reasoning assessment to divide them into 4 ability bands, from Band 1 at the bottom up to Band 4 at the top. We will admit the required number from each band based on the spread of ability of those applying.

The assessment is externally set by a well-established educational assessment agency and the papers are collected by the agency to be marked. The academy is then provided with a list of each child's assessment mark, similar to an IQ score, with 100 being the average. The marks are divided into four bands and we are instructed how many children to take from each band e.g. if 40% of those applying are identified in band 2, then 40% of our intake has to be from this band. This ensures that the 180 places we offer reflect the ability range of our applicants.

The assessment is not a traditional entrance exam which children either pass or fail. It is done to ensure that we take a fair number of children across the whole ability range.

Children in receipt of an Education, Health and Care plan (EHC) and children who are in public care who do not take the assessment will be allocated to the appropriate band on the basis of an alternative appropriate assessment.

Children in receipt of an Education, Health and Care plan (EHC) that names TASB as the appropriate school, will be admitted before any other children."

9. I have also been provided with supplementary information which explains the banding process in further detail.

10. In the event of oversubscription within each band, priority for admission will be determined using the following criteria:

1. (a) *Children who are in public care – ‘Looked After’ (as defined by section 22 of the Children Act 1989) or children who were previously looked after but ceased to be so because they became adopted or became subject to a child arrangements or special guardianship order.*
(b) *Children who appear [to the admission authority of the academy] to have been in public care outside of England and ceased to be in public care as a result of being adopted.*
2. *Children who attend the primary schools of Akroydon Primary Academy, Christ Church CE (VA) Junior School (Sowerby Bridge), Norland CoE (VC), Sowerby Bridge CE (VC) Primary School, Holy Trinity CoE (VA), Triangle CE (VC) Primary School and St Mary’s CE (VC) J&I School (Sowerby Bridge).*
3. *Children whose siblings currently attend the academy and who will continue to do so on the date of admission.*
4. *Children of staff employed at the academy. ‘Staff’ for this purpose are defined as anyone employed by the academy who has held a permanent contract with the academy for at least two years prior to the application or to staff recently appointed to a post for which there is a demonstrable skill shortage.*
5. *Other children.*

If there is oversubscription in any category, pupils will be admitted in order of proximity to TASB.

Random allocation (undertaken by the local authority or another body unconnected with TASB) will be used as a tie-break to decide who has highest priority for admission if the distance between a child’s home and the academy is equidistant in any individual case. However, if children of multiple birth (twins and triplets) are tied for the final place, those siblings will be admitted over PAN.

The academy will operate a waiting list for students (for a full academic year) and will offer available places to students based on the principles of fair banding i.e. in effect, four different waiting lists if there is oversubscription in all four bands.

Consideration of Case

17. The LA was consulted in relation to the admission arrangements for September 2020, and was concerned about the adoption of banding and the school’s separate intention to become a designated Church of England faith school. The Admissions Forum for Calderdale considered these proposed changes at a meeting on 29 January 2019. The Forum considered that the school is unlikely to be oversubscribed for admissions in 2020. Therefore, the oversubscription criteria are effectively redundant, and that “fair banding” as

a proposal should be considered at a later date once a recovery in pupil numbers is evident. However, the members of the Forum were concerned that, if the LA did not challenge the introduction of banding at the point of introduction, this might “set a precedent” which would mean that it would be difficult to challenge this at a later stage.

18. In relation to Religious Designation, the Forum recognised the value of schools with a religious ethos and commented on how such ethos and values drew parents from all communities, but wished to express its concern over the inclusion of any oversubscription criteria which gave priority on faith grounds. Of particular concern was the fact that a significant number of pupils from the Central Halifax area, a largely Muslim community, currently elect to send their children to the school, and that they might, as a consequence, be excluded from this provision or perceive that the provision is not available to them. The Forum decided that the Director of Children and Young People’s Services be requested to write to the Principal of the school outlining the concerns of the Forum.

19. A letter was accordingly sent to the school on 4 February 2019. It said that, should the proposed arrangements be determined in their current form, an objection would be made to the Office of the Schools Adjudicator based upon the issues highlighted within the letter. If the school wished to discuss this further, a meeting would be arranged to talk through next steps and the process for resolving any differences that might remain after such discussions. The LA says that a number of discussions have taken place since to understand the respective positions and concerns. The school says that, prior to the meeting of the Admissions Forum, the LA had met with the school and had indicated that, with the caveat that the admission authority would review its position within two years if any unintended negative consequences were forthcoming, it was minded not to oppose the proposals. The school says that the LA’s position changed when elected members became involved. The LA proposed a meeting between the admission authority and elected members in the letter of 4 February 2019. The school says that this did not happen as the members did not make themselves available to meet representatives of the MAT.

20. The LA has sent me a copy of a response to the consultation on the proposed change to the admission arrangements which was submitted by Warley Road Primary School. This school challenges whether there is sufficient need for additional Church of England secondary school provision in the area. The governors also say that, despite there being 20 Church of England primary schools, Trinity Sowerby Bridge has chosen feeder schools in the most affluent areas and not those in the less well-off areas of Central Halifax. This is perceived to be an attempt to secure a more affluent intake. The failure to name some of the primary schools from which children currently join the school is said to amount to unfair discrimination against certain ethnic communities. The introduction of banding might also be seen as selection by ability as it is unclear what percentages will be taken from each band. There are deep concerns that the school is seeking to change its character into one with a perceived “*better catchment*” capable of achieving better results, and that this shows a total disregard for the communities which the school has traditionally served.

21. The LA has also sent in a copy of the consultation response from Sowerby Village Church of England Primary School. The governors of this school were concerned that it had

been named as a feeder school without being consulted. The governors were against this for several reasons. They considered that the introduction of banding by one school unilaterally was not an inclusive process, and it was strongly felt that this proposal did not fit comfortably within a Christian ethos. Governors strongly objected to the proposed implementation of banding by one school in the community. It was the view of those present when the proposal was discussed that the proposed arrangements would be failing the community which the school had been set up to serve. Governors strongly felt that, as a proposed Church of England school, Trinity Sowerby Bridge should be prepared to accept everyone in their immediate community, irrespective of ability.

22. The essence of the LA's objection is that the school's highest concentration of pupils is drawn from two wards, Sowerby Bridge and Park Wards. Park Ward accommodates a predominantly Asian/Asian British population where 65 per cent identify as Muslim. Sowerby Bridge has a predominantly White population with 59 per cent identifying as Christian. Both Wards contain pockets of deprivation. The LA says that, in Park Ward, 33.6 per cent of children (0-15 years) live in families that are "*income deprived*", and for Sowerby Bridge the figure is 22 per cent.

23. The LA considers that the school's arrangements are of a complexity such that significant numbers of potential applicants may find it difficult to gauge their chances of securing a place. To this extent, the LA considers that the arrangements are in breach of the Code. There are no pre-published numbers for places within each band, which the LA considers represents a lack of transparency which the LA views as also being in breach of the Code. The arrangements comprise four ability bands with the number of places allocated under each band to be set after assessments have been taken with the intention of reflecting the spread of ability of applicants. The LA considers this approach to be flawed, as the spread of applicants will not necessarily equate to the need for places in the local area.

24. The LA says that, in common with all LAs, Calderdale operates an equal preference scheme. For this school, a significant number of applications are '*lower ranked*' preferences. The LA has explained that this is not yet a school of first choice for many parents, but it does, for some, represent a perceived "*safe bet*" or "*back-up plan*" in the preferencing context. The LA says:

"Given the record number of pupils currently transitioning to secondary school, an increasing number of parents will miss out on higher preference schools (albeit some of this may be offset by recent basic need investment and expansion). As a consequence parents are more likely to make use of all 5 preferences (and the LA will reinforce this advice to parents), to avoid the risk of an allocation at a school not listed as any preference. It is therefore conceivable that the admission limit for each band will not be representative of families who truly want or need a place at TASB. The results from assessments could be skewed by these candidates applying for a place as a back-up option rather than true preference of school (potential Grammar School candidates for example). Another significant factor will be the number of late applications submitted for this school which might not be reflected at all in the setting of banding limits.

Out of 83 submitted first preferences [for places at the school] for September 2019, 17 were late. In total 46 out of this year's allocation of 240 places were late applications (an exceptional allocation reflective of the unprecedented size of this year's cohort and in part a consequence of limited alternative options open to parents). To give this further context, in the whole borough there were 73 late applications. Trinity Academy Sowerby Bridge accounted for 63% of all late applications. Also a significant number of places were offered where the school had not been preferenced at all by parents and this is the result of the Authority being unable to meet parental preference elsewhere or where no application was submitted by a parent at all. Every child should of course receive the offer of a place on national offer day".

25. The LA considers that, if banding had applied this year, the banding thresholds would not have reflected the ability of those 'non-applicants' or late applicants. It is the LA's view that the impact of the proposed changes cannot be realistically modelled as there is no historical data to work with, and allocation patterns this year are changing in any event due to a record sized cohort and programme of school expansions. There is however sufficient detail to suggest that there will be problems created as a consequence of the proposals. The feeder schools listed in the proposed arrangements are not all local schools. All except one share the Anglian designation or ethos. Pupils within these schools already enjoy feeder status to other schools in the area, and will have "a double advantage" over many others. I feel bound to interject at this point to say that I couldn't agree more with the LA that the impact of these proposals cannot be realistically modelled based upon the information currently available, which is why the LA's original approach of modelling the effect for two years and then deciding whether to object seems to me to have been a very good idea. In terms of banding and late applicants, the arrangements are presently unclear about what the procedure will be for banding late applicants and 'non-applicants'. I have dealt with this point below. I should also say in this context that the Admissions Forum's concern that if no objection were made now, it could be hard to challenge the use of banding in the future is, while understandable, misplaced. Whether the use of banding (or for that matter a particular set of feeder schools) is reasonable and fair will depend in part at least on the circumstances which prevail at the time the objection is made. It is perfectly possible that a set of arrangements may be reasonable and fair but cease to become so if the nature of the local population and the need for school places change.

26. It is the LA's view that there is a significant potential for pupils in the Park and Sowerby Bridge Wards to be displaced and left without access to alternative provision. Opportunities further afield are curtailed by the limited number of places available and the fact that, whilst a wide variety of admissions arrangements apply in Calderdale schools, the common thread is that the final oversubscription criteria is almost always the proximity of a child's home address to school. Securing a place further afield at popular schools in years where there are high pupil numbers is not a realistic option without some other connection such as a sibling link or feeder school status.

27. The LA says that it is investing £6.25 million pounds this year with the Trinity MAT to create extra capacity within the Secondary School sector. This includes the creation of additional capacity at the school. This has been achieved through (in lay terms) the

amalgamation of a number of sixth forms into one which is to be accommodated in a new Town Centre provision. The space vacated by these sixth forms to be re-designated for use by 11-16 year olds thereby creating the additional places required. As a consequence of this decision to invest, the LA says it has extremely limited finance remaining and is not in a position to undertake expansion of other school provision should this be required following the displacement of any pupils arising out of the operation of the school's new arrangements. If the determination of the school's new arrangements results in restricted access for local pupils, this would be inconsistent with the decision to invest in the creation of additional school places, which was based on need.

28. Whilst the LA does not object to the proposed adoption of faith designation, there is concern that the adoption of such designation combined with the adoption of predominantly Church of England feeder schools might create an "*unintended perception*" for non-Anglicans in relation to the chances of securing a place. The LA asserts that this will affect families in the Park Ward which is predominantly of Muslim faith and has traditionally seen significant pupil numbers attending the school. The LA has not submitted any evidence that there were any objections to the consultation on the 2020 admission arrangements submitted on this basis from this sector of the community. The school says that the reaction of the local community to any proposed changes has been positive. Faced with conflicting evidence, I have no basis to reach any firm conclusions about what the local Muslim sector of the community think about the changes made to the school's arrangements.

29. Because I could see from the consultation papers circulated by the school that the school was considering seeking designation as a school with a Church of England religious character, and because all but one of its proposed feeder schools were Church of England primaries, I asked my office to write to the Leeds diocese thinking that the diocese should be a party to the case. The diocese has confirmed that the school is not currently designated as a school of religious character. The diocese supported the school's wish to consult upon seeking designation, and will support any application to the Secretary of State for designation. However, the diocese says that the timescale for such an application has not yet been agreed, and the outcome is not a certainty. This being the case, the diocese has not provided any guidance to the school. The diocese does say, however, that the LA's perception that being designated as a Church of England school deters applications from Muslims is not reflective of what happens in practice. It has many church schools with 80 – 100 per cent attendance by British Asian Muslims, and says that Church of England schools are very popular within this demographic.

30. The school has sent a very full response to the objection for which I am grateful. The minutes of the governing board of the MAT dated 31 January 2019 indicate that it was agreed following discussion that the arrangements would be published, with the caveat that conversations are still taking place with the local authority. The governors of the school were fully supportive of this decision. I have taken this to mean that the arrangements were determined on that date. I have divided my consideration of this objection into four parts: Banding, Feeder Schools, The Complexity of the Arrangements, and The Operation of the Wafting List.

Part One Banding

31. The school has explained that parents/carers are not aware of their child's band, nor the percentage of pupils which the school intends to admit from that band when they express a preference for the school. The school considers that this information is neither useful nor relevant to the parent/carer because, whilst the school will admit more pupils from a band that has more applicants allocated to it, the percentage admitted from each band remains proportionate to the number of applicants for all bands. In other words, the school says, an applicant's score (and the band they are subsequently allocated to) is not relevant to his/her chances of gaining entry to the school. If the school is oversubscribed, the only relevant information is the oversubscription criteria, which will be used in each band in exactly the same manner. The purpose of the banding assessment is to ensure that the school admits a cohort that "*exactly matches the ability profile of the children applying*" – the school says that the relevant information for parents in these circumstances is the oversubscription criteria.

32. To a degree, I accept the validity of the school's argument here. A banding test is not like a test for a grammar school place where a parent needs to know whether his or her child has met the standard for admission so as to make an informed decision about whether or not to apply. However, paragraph 1.32(c) of the Code (cited above) does require that: "*Admission authorities **must** take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place*". The school is careful to refer to a banding "assessment", as opposed to a test, but the Code uses the word "test" in this context, and paragraph 1.32(c) of the Code applies in relation to banding, which is considered by the Code and defined by the Act to be a permitted form of selection. **The school will, therefore, need to take all reasonable steps to notify parents of the outcome of the banding assessment in terms of which band their child falls into, and the arrangements must be revised in order to make it clear to parents that the school will do this.**

33. I have considered whether any aspect of the description of the operation of the banding arrangements or indeed any aspect of the description of the type of banding used is unclear. Paragraph 14 of the Code requires that admission arrangements must be sufficiently clear so that parents are able to look at a set of arrangements and understand easily how places for that school will be allocated. Admission arrangements are defined 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 offered*". (See p.5 of the Code). The exact wording in the arrangements is:

"We will admit the required number from each band based on the spread of ability of those applying..."

The assessment is externally set by a well-established educational assessment agency and the papers are collected by the agency to be marked. The academy is then provided with a list of each child's assessment mark, similar to an IQ score, with 100 being the average.

The marks are divided into four bands and we are instructed how many children to take from each band e.g. if 40% of those applying are identified in band 2, then 40% of our intake has to be from this band. This ensures that the 180 places we offer reflect the ability range of our applicants”.

34. The arrangements state “*Our aim is to ensure that our intake is representative of the full ability range and exactly matches the ability profile of the children applying*”. The ability profile of the children applying for the school may or may not be representative of the full ability range, so the school is actually conflating two different things here. It appears from the remaining text that the intention is that the school intake represents the ability of those applying, but the first part of the statement makes this unclear. The lack of clarity in this respect also rendered the term “*required number*” unclear. The school has clarified that the aim of the arrangements is to ensure that when the school is oversubscribed the ability range admitted matches the ability profile of the children applying, and has agreed to revise the arrangements in order to make this clear. My view is that, if this point is clarified, the operation of the banding arrangements does then become clear, and I am grateful to the school for its co-operation in this matter. **The arrangements will need to be revised in order to state clearly the nature of the banding arrangements and, where describing their purpose, to do so accurately.**

35. If the school clarifies in the arrangements the aim of the banding procedure which it has adopted, the term ‘*required number*’ will then naturally fall to be construed to mean the percentage of applicants in each band which is reflective of the percentage of the total number of applicants falling within the band, as per the example given, which is helpful in terms of clarity. Subject to the school making this revision, the description of the operation of the banding arrangements is clear in most other respects. However, there is a lack of clarity about how late applicants who have not been assessed are treated. I have dealt with this point under part three of my consideration.

36. The next question is whether the banding arrangements operate reasonably and fairly in accordance with paragraphs 14 and 1.8 of the Code, cited above, which require respectively that “*the practices and the criteria used to decide the allocation of school places are objective*”, and that “*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*”. Reasonableness and fairness are two separate questions. The essential difference between reasonableness and fairness is that reasonableness is judged from an objective basis, whereas a determination of what is fair will involve a subjective value judgement. A further significant difference is that, in considering whether a set of admission arrangements is reasonable, it is necessary to consider the reasons, or grounds, for adopting the particular set of arrangements, and the effect of the decision. In considering fairness, the focus of the consideration will be exclusively upon the effect or the practical application. The question is to whom are the arrangements unfair, how and why?

37. Turning firstly to reasonableness, my starting point is that it is for an authority to determine the arrangements it wishes to adopt for the school. This is made clear in paragraphs 1.9 and 1.10 of the Code. An adjudicator cannot interfere with this determination unless the arrangements are unlawful. Neither can an adjudicator suggest that a different set of arrangements would be ‘better’ in the context of an individual school. In order for me to determine that a set of admission arrangements are unreasonable (and therefore unlawful for that reason), I must be able to conclude that the arrangements are such that no reasonable admission authority, having taken into account all relevant information, would determine. This is a high threshold. My initial conclusion, on this point, having taken into account all representations made, is that the school is seeking to admit a cohort of local applicants which is representative of the level of ability of children who have applied for a place. This is a reasonable objective and, is moreover, an approach which is explicitly sanctioned by the Act and by the Code as set out in paragraph 1.25 of the Code.

38. However, the LA’s concern is certainly a legitimate one, namely that the school formerly operated to serve a local catchment, and that applicants from this catchment may no longer be offered places at the school under the arrangements for 2020. This may, or may not, be true. If the school remains undersubscribed, as the LA appeared initially to be predicting, it will need to admit applicants up to PAN regardless of whether they have taken the banding test or where they fall within the oversubscription criteria. However, at this point in time, it is uncertain as to whether the school will be under-subscribed for 2020 which is the year for which I have jurisdiction. The school increased its PAN to 240 for admissions in 2019 so that it could accommodate all who wished to go there and could not be offered a place at a more highly preferred school. The essence of the LA’s concern is that *the banding arrangements* are unreasonable because they may displace local applicants.

39. The school’s representations on this point are as follows: “*Trinity proposes 4 ability bands (with thresholds set in accordance with national benchmarks). The number of places allocated under each to be set after assessments have taken (sic) with the intention of reflecting the spread of ability of applicants. The Authority considers this to be flawed as the spread of ‘applicants’ will not necessarily equate to the need for places in the local area.*

The LA, by its own admission, has no evidence at all to support this. Moreover, the current profile of the TASB cohort is geographically diverse. This is borne out in the appendices that the LA attached to its initial objection, namely 2 (catchment map) and 15 (the current spread of TASB’s intake by postal district). For example:

· HX6.2 is the post code that TASB is located in, and yet only 27 of its current cohort of 640 (or 4.2%) reside in HX6.2 · The vast majority of its pupils (485, or 76%) reside in the postcodes HX1.4, HX1.3, HX1.5, HX2.0 and HX1.2 – which are all directly in the catchment area of another school, namely The Halifax Academy. · Indeed, the next most popular post code after these five is HX2.8 (41 pupils, or 6%) has two nearer academies than TASB (Trinity Academy Halifax and The Halifax Academy). It is worth noting that both of these academies have also recently agreed to increase their PAN. · The postcodes that are more relevant to TASB i.e. immediately adjacent to HX6.2, are HX6.1 and HX6.3. Both these postcodes, which are geographically nearer to the academy than any of the

postcodes listed above, are responsible for 10 pupils (or 1.6% of the cohort) and 3 pupils (or 0.4% of the cohort) respectively.

Based on the analysis above (provided by the LA itself), there is significant evidence to state that, at present, TASB is not catering for its immediate local community because those pupils are predominantly choosing to attend another school (Ryburn Valley High School), whilst pupils from further afield (who cannot get into their local secondary provision) are 'ending up' allocated to TASB.

The main point here is that the LA's assertion that FB [fair banding] is flawed because 'the spread of applicants will not necessarily meet the need for places in the local area' has no credibility, especially given the fact that its current cohort is arguably not 'local' and a very high number of its pupils live nearer other secondary schools as evidenced by the LA's appendices".

40. In relation to late applicants, the school says that the arrangements state that *'applicants who do not sit the assessment for a valid reason e.g. illness, moving to the authority after the initial assessment, will be given an additional opportunity to sit the assessment at a later date'*. The school considers that the LA is being disingenuous in suggesting that late applicants will be disadvantaged. The LA approached the school this year and requested it to increase its PAN in the admission year commencing September 2019, as the LA was struggling to place all secondary aged pupils. At the request of the LA, and to ensure that all pupils had a secondary school to attend, the school agreed to admit up to 240 pupils for this (extraordinary) year group. This included a high proportion of late applicants due to the nature of the request. The school received a total of 62 late applicants for admission in September 2019. The school has postcode data for 44 of these 62 applicants. For 42 of those pupils (or 95 per cent) the school would not count as their local school, and there are examples of late applicants who have at least six other secondary schools nearer to their home. The school therefore considers that there is no evidence to support the LA's assertion that late applicants would not be offered a place at the school.

41. The LA has not disputed these points. I note that the school has based the above arguments upon what has happened for 2019 admissions, whereas it now has different arrangements. However, I think the salient point is that the school and the MAT have been cooperative with the LA, and the LA therefore has no basis for considering that this would not be the case going forward. What is important in relation to this particular issue is that the adoption of banding does not prevent local applicants from applying to the school. It does not permit the school to have vacant places if there are parents who wish to take the places available for their children, and there is no indication that the school would wish to have vacant places.

42. I have no reason to doubt that, by adopting banding, the school is seeking to move towards the establishment of a mixed ability local cohort which takes full account of the ability profiles of those applying to be admitted. I also have no doubt that the school and the MAT have considered carefully the effect of adopting banding. The school has traditionally been a valuable resource for the LA in securing places for late applicants and applicants

who have been unable to obtain places elsewhere. The school is seeking to change its profile by adopting a set of arrangements which has proved successful in relation to its sister school, Trinity Academy Halifax.

43. The LA's duty to its residents is to provide a sufficient number of secondary school places. I do not underestimate the complexities and difficulties faced by LAs in having to comply with this duty. However, provided the LA does ensure there are sufficient places, it cannot much matter if this school attracts applicants who previously would have gone to Ryburn Valley, Trinity Academy Halifax, or Halifax Academy. If there is a sufficient number of places within the area, and Trinity Sowerby Bridge becomes oversubscribed, this will leave vacant places in other schools which those schools will have to fill. If there are more applicants for admission in September 2020 than places available, the LA will need to persuade schools to increase their PAN, as it has done for 2019, or make other arrangements to provide additional places. The school has assisted the LA in relation to admissions in September 2019 by increasing its PAN. The LA has not sought to argue that, if this school is full; that there is a likelihood that parents will have to travel very long distances to school; or that the LA will be required to pay a large sum of money to provide additional transport costs.

44. Whilst I can see that it is valuable for an LA to have a traditionally undersubscribed school which can accommodate late applicants and applicants who have not been offered places at schools for which they have expressed a higher preference, the effect of this has been that the school is not a school which primarily accepts applicants from the immediate area. The school is seeking to ensure that it receives an intake which is reflective of the ability spread of its applicants. How this will affect the school's intake in terms of the precise areas from which those children are drawn remains to be seen. Until and unless the school becomes oversubscribed it will simply continue to admit all those who want a place.

45. Other objections raised are that banding is not an inclusive process. My view on this is that the school's banding arrangements include every applicant whose parents choose for them to be assessed, therefore banding is as inclusive as parents choose it to be. As I have emphasised, the introduction of banding does not allow the school to refuse applications where it has vacant places (I will return to this point in the context of feeder schools). There are no pre-published numbers within each band, but the banding arrangements which the school has adopted are permissible under the Code. Where banding is based upon the level of ability of the cohort applying to the school, this will not enable the arrangements to include pre-published numbers within each band. It would not be possible to do this. I have said that the arrangements must be revised so that the school must take all reasonable steps to tell parents their child's band, but this is the extent of the Code's requirements. Where applicants are banded in order to reflect the ability of applicants, the approach taken by the school (which I find to be lawful) means that the percentage of applicants falling within each band who will be admitted cannot be determined until the assessments are completed.

46. It is also suggested that the spread of applicants (in terms of where they live) who will be offered places will not necessarily equate to the need for places in the local area. My

view is that the spread of applicants will equate to whichever applicants complete the banding assessment and apply to the school. It is not the banding arrangements which will restrict the number of offers made to 'local applicants', as these are reflective of the ability of whoever applies. The adoption of feeder schools will affect the level of priority afforded to applicants not attending these schools (a point which I will return to), but the adoption of banding arrangements does not have this effect.

47. It is also suggested that, by adopting banding arrangements, the school is failing the community which it was set up to serve. Again, the arrangements may bring about an outcome whereby applicants living in the LA wards close to the school may not be offered places at the school, but this is unlikely to be simply as a result of the adoption of banding. This point also relates to the adoption of the particular feeder schools selected by the school (and again I will return to this).

48. It is possible that, in the future, the school will become a popular choice for parents, and will attract more applicants who fall within the higher bands who attend feeder schools but who do not live in the LA wards close to the school. If this were to be the case and the arrangements could be said to operate unfairly to applicants in the LA wards close to the school, an objection could be brought based upon the relevant facts existing at that point in time. However, on the information currently before me, it appears that the adoption of banding arrangements which reflect the ability of those applying to the school will advantage applicants falling within the lower bands as long as those applicants continue to apply, and that applicants from the LA wards close to the school are more likely to fall within the lower bands. Having considered all of the evidence and representations submitted, **I do not consider that the adoption of banding renders these arrangements to be such that no reasonable admission authority would adopt, and therefore I do not uphold this aspect of the objection.**

49. Turning then to the question of whether the banding arrangements operate fairly. When considering fairness, an adjudicator must focus upon the effect, or the consequence, of the arrangements upon any relevant group. The concern is that the arrangements will operate unfairly to local applicants '*traditionally served by the school*', and particularly English Asian Muslim applicants, who will either be deterred from applying, or who will apply but be unable to gain places having been "displaced" by other applicants who under the revised arrangements will have a higher priority. There is currently no evidence suggesting that the adoption of banding *per se* will adversely affect any local applicants. However, looking at the school's evidence (undisputed by the LA), it appears that the school is not necessarily primarily a resource for local applicants. Neither is there any evidence to suggest that banding will disadvantage English Asian Muslim applicants unfairly. If the arrangements operate to admit a percentage in each band which is proportionate to the number of applicants, and if ability is assessed with reference to those who have applied, I cannot see that any identifiable group will be disadvantaged unfairly. I will consider separately whether the adoption of feeder schools may disadvantage any identifiable groups unfairly. **I have been not provided with any evidence which would suggest that the adoption of banding will operate to unfairly disadvantage any**

identifiable group, or indeed any particular racial group, and therefore I do not uphold this aspect of the objection.

50. There is one remaining aspect of the arrangements so far as they relate to banding which I must address where the arrangements do not conform with the Code. The arrangements state that children who have taken the banding assessment will be considered for places first. That is not problematic in itself provided that arrangements are made for late testing as is the case here. I deal later with issues specific to the waiting list. However, there may well be applications for the school made in the normal admission round where parents have not arranged for their child to take the banding assessment – however well advised they would have been to do so. The arrangements do not state how such applications would be dealt with and this means that it is not possible to rank all applications as required by paragraphs 15a, 15d and 1.7 of the Code. Paragraph 1.7 states in terms that “*Oversubscription criteria **must** then be applied to all other applicants [other than looked after and previously looked after children] in the order set out in the arrangements*”. An example may be helpful here. The school has a PAN of 180. Let us assume that three children have education, health and care plans which name the school and there are two looked after children for whom applications will be made. That will leave 175 places. If, say, on 31 October 2019, 150 children who have taken the banding assessment apply along with 50 children who have not, then all those 200 children must be ranked to decide which 175 will be offered a place and which 25 will not. The school’s arrangements as they stand make no mention of how the 50 children who have not taken the assessment will be ranked. The arrangements do explain about provision for late testing but parents cannot be required to enter their children for the assessment and their applications cannot be disregarded if they do not do so. Instead, they must be ranked and the MAT must have arrangements which allow for this. **To the extent that the arrangements do not explain how the applications of children who have not taken the banding assessment will be ranked I uphold this element of the objection. The Code requires that the arrangements be amended to address this matter.**

Part Two Feeder Schools

51. The requirements of paragraph 1.15 of the Code in relation to feeder schools are that they must be named, and that their selection must be reasonable and transparent. Paragraph 1.8 is also relevant here. The selection of feeder schools must not adversely affect any identifiable group unfairly. The LA considers that, to the degree that the feeder schools selected are not all “*local*” schools, this will mean that some applicants from the Park and Sowerby wards will be unlikely to be attending any of these feeder schools, and so will no longer be able to get a place at the school if the school becomes oversubscribed. Further, that the feeder schools (with one exception) are all Church of England Schools. There is a large local Muslim community in Park ward, and the LA is concerned that local Muslim families will perceive that their children are unlikely to be offered a place at the school.

52. As part of the objection, the LA has submitted a letter from the governing board of Warley Road Primary School which challenges whether there is sufficient need for

additional Church of England secondary school provision in the area, and suggests that Trinity Academy Sowerby Bridge has chosen feeder schools in the most affluent areas and not those in the less well-off areas of Central Halifax. This is perceived by the governing board of Warley Road to be an attempt to secure a more affluent intake. The failure to name some of the primary schools which currently serve Trinity Academy Sowerby Bridge is said to amount to unfair discrimination against certain ethnic communities. I will firstly consider whether the selection of feeder schools has been transparent, and I will then consider whether the selection is reasonable.

53. I am mindful that one of the named feeder schools, namely Sowerby Village Church of England Primary School, has been named as a feeder school contrary to the wishes of the governing board. This is a voluntary controlled school, and so the LA is the admissions authority. The LA was consulted about the proposal to select the named feeder schools, and has indicated that it is unhappy about the adoption of feeder schools *per se*. I do not consider that it is reasonable to select a school as a feeder school in circumstances where the governing board and the admission authority is so actively against its being named as such. **Therefore, I uphold this aspect of the objection in respect of Sowerby Village Primary School. The naming of this school is unreasonable and contrary to the requirements of paragraph 1.15 of the Code. As regards the other named feeder schools, I have seen no evidence that these schools are actively against being named as feeder schools.**

54. To the degree that the school consulted upon the feeder schools it wished to name before naming the schools in its determined arrangements and has they have indeed been named in the arrangements, the selection of these schools was transparent. As regards the position in relation to any feeder schools who have agreed to be named as such, the selection is at least reasonable from this perspective; however, there are a number of other suggestions made by the LA as to why the selection of these schools is unreasonable. Since the school is not a designated faith school, the question is whether there is any reasonable basis for selecting all Church of England schools as feeder schools, with the exception of Akroydon Primary School, which is part of the MAT. I note that the Trinity Academy MAT is a Church of England diocesan MAT, and so it is not unexpected that its schools would seek designation as Church of England faith schools. Such designation has not yet been secured for Trinity Academy Sowerby Bridge.

55. Paragraph 1.36 of the Code permits schools designated by the Secretary of State as having a religious character to use faith-based oversubscription criteria and to allocate places by reference to faith where the school is oversubscribed. The question then is whether the selection of predominantly Church of England feeder schools can be said to amount to the use of faith-based oversubscription criteria. My view is that selecting Church of England feeder schools does not amount to using faith-based oversubscription criteria. Priority is not afforded on the basis that applicants must be practising members of the Church of England faith. It is simply afforded on the basis of being on roll at a particular school. The feeder schools which are voluntary controlled schools, such as Sowerby Village CE Primary School do not have faith-based oversubscription criteria. In any event, there are many examples of Church of England primary schools being named as feeder schools to

secondary schools which are not designated as Church of England faith schools. The school says that its named feeder schools are predominantly Church of England schools because it is considering whether to pursue religious designation and that the school is eager to proactively build relationships with local Church of England primary schools. This appears reasonable to me.

56. In relation to the reasons for selecting the feeder schools it has, the school says that they are all local schools in the sense that they are located less than two miles from the school. Five out of the seven feeder schools have an HX6 postcode, which is the postcode of the school itself. Yet, the school says, the vast majority of the children who attend these feeder schools currently transfer to other secondary schools. The school gives the example Christ Church CE (VA) Junior School which 0.4 miles from Trinity Academy Sowerby Bridge, but which is named as a feeder school to Ryburn Valley High School, which is further away (1.3 (as the crow flies) and 1.9 miles (transport) from it).

57. There are ten primary schools in the HX6 postcode. The schools which have not been selected as feeder schools are New Road Primary School, Ripponden Community Primary School, Bolton Brow Academy, Sacred Heart Catholic School and St. John's CE Primary School. All five of these schools are feeder schools for Ryburn Valley High School. Therefore, applicants from these feeder schools will have priority for two secondary schools, whereas applicants from the other five primary schools have priority just for Ryburn Valley High School.

58. The pattern of applications for September 2020 is yet to be established. If Trinity Academy Sowerby Bridge is undersubscribed, or agrees to increase its PAN for a second year running, it may continue to admit applicants who do not attend its feeder schools including late applicants and applicants who have not been offered places at higher preference schools. Also, if parents of children attending the schools which are feeder schools for both Trinity Academy Sowerby Bridge and Ryburn Valley High School 'choose' Ryburn in preference to Trinity, the pattern of admissions between the schools may not change. This will mean that Trinity will not admit many applicants from the feeder schools, which in turn will mean more available places at the school for non-feeder school applicants.

59. I have looked in detail at the pattern of allocations to all Calderdale secondary schools for admissions in September 2019. There are ten non-selective schools and two selective schools. Inevitably, some schools are more popular with parents than others, however all schools were fully subscribed for this year group (and indeed there as a need for Trinity Academy Sowerby Bridge to increase its PAN). The non-selective schools, without exception, offer some level of priority for feeder school applicants or those living in designated catchment areas. Some schools use both as oversubscription criteria. However, seven schools did offer places based upon proximity this year, which is a lower level oversubscription criterion. By mentioning this, I merely make the point that this happened even in a year when there was a high level of pupils transferring to secondary school. I have not made an attempt to work out which schools, other than Ryburn Valley High School, would be viable options for parents of children attending New Road Primary

School, Ripponden Community Primary School, Bolton Brow Academy, Sacred Heart Catholic School and St. John's CE Primary School based upon proximity to the relevant secondary school. This is because I do not have the projected numbers for transfer to secondary schools in September 2020, and because (as I have said above) the pattern of applications remains to be established.

60. My overall conclusion is that increasing parental choice of secondary schools is a good thing. Using the school's example, if Christchurch CE Junior School is a feeder school to both Ryburn Valley High School and Trinity Academy Sowerby Bridge, this does not preclude parents from expressing a preference for Ryburn Valley High School. Parents will continue to have priority for Ryburn Valley. However, in the event that Trinity Academy Sowerby Bridge is oversubscribed for admission in September 2020, applicants attending this feeder school (and the other feeders) will have a higher priority than other applicants. From what I can see, the extent of the change in the pattern of admissions is that some children who would have gone to Ryburn Valley High School may go to Trinity Academy Sowerby Bridge instead. If this displaces applicants who would ordinarily have been admitted to Sowerby Bridge, Ryburn is an option. If Ryburn has vacant places, it can admit late applicants and applicants who have not been offered places at schools of higher preference. The LA is obliged to provide sufficient places. I do not underestimate the difficulties and complexities which this can sometimes involve, but the selection of feeder schools and adoption of banding by Trinity Academy Sowerby Bridge will not mean there are fewer available places.

61. In relation to the suggestion that the school has chosen feeder schools in the most affluent areas and not those in the less well-off areas of Central Halifax, this would be a concern if there was an attempt to secure a more affluent intake because this would not, of itself, be a reasonable ground. However, there is no evidence to substantiate this. In a situation where an admission authority has advanced cogent reasons for selecting the feeder schools it has, there would need to be compelling evidence that the school had some unreasonable ulterior motive in acting as it has. In the absence of such evidence, I am unable to conclude that the school has such a motive.

62. Also of concern is the allegation that the failure to name as feeder schools some of the primary schools which currently serve the school amounts to unfair discrimination against certain ethnic communities. The diocese has said that its experience of providing church school education to higher percentage Muslim communities is that Church of England schools are extremely popular amongst this demographic. I accept that this may be true, but the issue here is that the local primary schools which are primarily populated with British Asian Muslim pupils have not been selected as feeder schools, and so these pupils will have a lower level of priority than applicants from the feeder schools who will not predominantly be of British Asian Muslim background.

63. The school says that, in selecting its feeder schools, it has endeavoured to strike a balance which reflects local geography, mixed attainment and cultural diversity. The school has sent me an Equality Impact Report, which indicates that 38 percent of the school's intake is Muslim, and 27 percent is Christian. In terms of ethnicity, 37 percent of the

school's population is identified as White British and 30 percent Pakistani. These are the predominant groups. The school says that it entered into conversations with parents at the school before formally joining the MAT about acquiring a Church of England religious character. This was because the MAT's flagship school is a Church of England school.

64. Following these conversations, the school decided to consult formally on this proposal prior to determining its arrangements for admission in September 2020. The school says that the response to the proposal to seek religious designation was overwhelmingly positive, and nobody raised any issues with regard to a negative impact on any group with protected characteristics. Indeed, a number of respondents spoke of how such developments would be positively received by the school's diverse community. I note, however, that the minutes of the meeting of the MAT on 31 January 2019 at which the arrangements for 2020 were determined, do make reference to negative responses to the consultation on the school's arrangements for admission in September 2020. The school has volunteered to remove priority for applicants from the named feeder schools from its determined arrangements for 2020 should I consider this appropriate.

65. The school says: *"Furthermore, we have also sought the advice of another local academy chain that serves a community that is predominantly Pakistani and of high socio-economic deprivation. This MAT has also successfully operated fair banding for over a decade in a number of its schools, without any complaints regarding it being too complex or inaccessible for its communities (and the high level of engagement from those communities suggest the opposite).*

Finally we approached a number of our own parents (who represent a diverse intake as shown above) and surveyed them with regard to their understanding and potential engagement with our new proposals. All indicators showed a clarity of understanding (as well as support) with regard to fair banding and the importance of the oversubscription criteria".

66. There are three relevant points being made here:

- whether banding will prejudice any particular ethnic group. There is no evidence to support that it will, and I have dealt with this point in Part One above;
- whether the introduction of banding will make the arrangements more difficult for parents from particular ethnic groups to understand, and again this appears to be merely an assertion. The arrangements relating to banding are clear (subject to the revisions which I have said will need to be made). I have dealt with the issue of the clarity of the banding arrangements in Parts One and Three.
- finally there is the question of whether the selection of feeder schools (albeit that they have been selected for otherwise valid reasons) will adversely affect the Muslim parents and children who currently make up 38 percent of the school's intake. This question is relevant to this part of the objection.

67. It is difficult to predict with any certainty whether the adoption of the named feeder schools will adversely impact Muslim parents and children. The school's Equality Impact Report does not address the point. The reason why this is so difficult to predict is that the pattern of admissions for the school is that it has always admitted a high number of late applicants and applicants who have been unsuccessful in obtaining places at schools of higher preference. So the school does not have a "catchment" which is easily identifiable. If it were the case that each of the feeder schools selected by the school had very low numbers of pupils who are non-Muslim and predominantly White, it could be argued that the effect of selecting these feeder schools is indirectly discriminatory. But, even if this were the case, what is still uncertain is whether the selection of feeder schools will make any difference to the pattern of admissions to the school. This would need to be monitored over time.

68. The tables below show the figures for the allocation of places for Ryburn Valley High School in 2019. The majority of places were allocated to applicants attending feeder schools. The question is whether this will change because the parents who have children in schools which are feeder schools for both Ryburn Valley High School and Trinity Academy Sowerby Bridge will express a higher preference for the latter. Ryburn Valley High School is oversubscribed on first preferences for admission in September 2019.

Admission figures

Planned admission number	265
Number of first preference applications	298
Number of second preference applications	125
Number of third preference applications	73
Other preference applications	76
Total number of places allocated	265

Allocation data

Distance	0
Education health and care plan	3
Feeder link	256
Looked after	6
Ryburn ward	0
Sibling	0
Staff	0

69. It is unpredictable as to whether Trinity Academy Sowerby Bridge will become a school of preference (or higher level of preference) for parents whose children attend the feeder schools. Trinity Sowerby Bridge School has shown a marked improvement in results last year, but parents may still be hesitant about applying to the school where their children have good prospects of being offered places at another secondary school. So, whilst there is the *possibility* that the selection of feeder schools may adversely affect Muslim applicants if its intake changes so that the majority of applicants are from feeder schools whose intake of Muslims is lower than the school's current intake, this appears to be merely a suggestion. In any event, if the school is not able to admit up to PAN with applicants from feeder schools, it will have to admit "other children", which will mean that its intake in September 2020 is likely to be similar to its current intake. **In the absence of any firm evidence, I do not uphold this part of the objection, though I can see that this is a matter of significant concern for the LA and other local schools.**

70. I reiterate the points I made earlier. Firstly, that it is for an admission authority to determine its arrangements, and I can only intervene if I have evidence that the arrangements are unlawful. Secondly, that the LA's original plan was to monitor the impact of the school's arrangements for a period of two years, and then bring an objection to the Adjudicator if there is any adverse effect. This seems to me to have been a very sensible idea, and it remains open to the LA make an objection to the Adjudicator in two years' time if it can produce evidence that the arrangements operate to discriminate unlawfully against any group who share the protected characteristics, or indeed if the arrangements operate to cause an unfairness to any identifiable group. I do understand the LA's concerns.

Part Three The Arrangements are Over-complex and therefore Unclear

71. I have observed that there is an additional problem with the clarity of the banding arrangements. The school says that it has always admitted late applicants in the past. Whether it will do so in September 2020 will depend upon the number and the nature of the applications it receives. Any applicants who elect for their child to take the banding assessment will be afforded a degree of priority determined by which band their child falls within, whether their child attends a feeder school and proximity to the school (with random allocation as a tie break). The percentage of applicants within each band is determined in order to admit up to the PAN.

72. What is not clear from the arrangement is what happens to applicants who do not undergo the banding assessment. The school says that, where a child was ill or moved into the authority after the initial assessment, that child will be given an additional opportunity to sit the assessment at a later date. But there may be applicants who live in the authority whose children have not taken the banding assessment because they have simply applied late. It is not clear from the arrangements whether the intention is that all applicants will be offered the opportunity to undergo the banding assessment even if they are late applicants. If so, this must be made clear. There may be applicants who simply refuse to allow their child undergo a banding assessment (albeit that this would not be in their interests). An alternative option would be for the arrangements to provide that any non-banded applicants will be ranked in order of priority **after** all of the banded applicants with the level of priority

then determined with reference to the oversubscription criteria. The school must admit up to its PAN, therefore it would be obliged to admit applicants who are unbanded if there are vacant places. This may then skew the proportions of applicants within each band to an extent which would be unknown. **The arrangements need to be clear in regard to late applicants who have not been assessed, and so will need to be revised in order to conform to the requirements of paragraphs 1.26 and 14 of the code. The provisions relating to the operation of the waiting list will also need to be made clear in regard to these applicants.**

73. I should say that I have come across a number of sets of admission arrangements which incorporate both banding and feeder schools, and this is perfectly lawful. There are some aspects of the arrangements which I have highlighted as being unclear and which will need to be revised. The arrangements adopt a form of banding which provides that its intake will be reflective of the children applying to the school. Since the school is situated in an area where applicants are below the national average, it would be inappropriate for it to adopt the alternative form of banding which prescribes fixed percentage of applicants and is based upon the national level of ability. The form of banding which the school has adopted is more difficult to explain. But the arrangements will explain the process clearly to parents once the school has made the revisions I have required it to make. The procedure, for and the purpose of, taking the banding assessment are explained clearly. I noted that the supplementary information form relating to banding which I have been sent does not appear on the school's website. Perhaps this information is communicated individually to parents whose children are taking the assessment, but **if the supplementary information form is part of the arrangements (and it seems to me that it is), it must be published on the school's website alongside the arrangements.**

74. What is suggested by the LA is that the group of parents who apply to the school will have particular difficulties with complex arrangements. The only way around this that I can see would be for the LA and the school to provide advice, which I am sure that they will do. Also, with the adoption of feeder schools, it may be that the pattern of applications will change, and again this is something which is uncertain at the moment but will become clearer as the effect of the arrangements is monitored over time. Although I have found that the arrangements are unclear in a number of respects, I do not find the arrangements to be unclear in terms of their complexity. The arrangements are as complex as they need to be. **Therefore I do not uphold this aspect of the objection.**

Part Four The Operation of the Waiting List is Unclear, as there will be Four Waiting Lists.

75. The arrangements say: "*The academy will operate a waiting list for students (for a full academic year) and will offer available places to students based on the principles of fair banding i.e. in effect, four different waiting lists if there is oversubscription in all four bands*". The LA has concerns about potential for this approach to result in places being reserved for pupils in higher bands whilst local pupils are denied access to education and considers that there should be more clarity around this statement and within the guidance for parents.

76. I agree with the LA that the operation of the waiting list is not sufficiently clear. Its operation will necessarily be complex because, logically, it should operate to reflect the proportions of applicants in each band which the school has decided to admit. The school has confirmed that this is the intention. It says that, if a child in band one leaves, or decides not to take up the offer of a place, he/she will be replaced by the child who is at the top of the band one waiting list. **This does need to be explained, and the arrangements will need to be revised in order to make clear that this is how the waiting list will operate.** The arrangements say that the lists will be in place for a full academic year.

77. I have dealt earlier in this determination with the matter of ranking applicants in the normal admission round who had not taken the banding assessment. When I asked the school what will happen to applicants who apply to the school who have not been banded, it pointed out that it is stated in the arrangements that applicants who sit the banding assessment will be considered first. If this means that these applicants will be offered places from the waiting list only after all applicants who have been banded have been offered a place and not taken up the offer, then this does need to be stated explicitly so that the point is clear to parents. The school again points out that there are further opportunities for applicants to sit the banding assessment if the initial opportunity is missed through no fault of their own, and acknowledges that this may mean multiple occasions when the school has to make a bespoke arrangement for children to sit the assessment. The school has also indicated that, in some circumstances, the school may use the procedure that it has outlined for children in receipt of an EHC plan or children who are Looked After or previously Looked After. I am concerned here with the clarity of the operation of waiting list, which will need to be revised in order to be made clearer. If it is the intention of the school to make bespoke arrangements for applicants to sit a banding assessment or to use a different method of assessment in some circumstances, this must also be explained clearly in the arrangements. **For these reasons, I uphold this aspect of the objection.**

Other matters

78. I raised two other matters of concern with the school. The first was that the arrangements appeared to be unclear in relation to what the alternative assessment for children in receipt of an Education, Health and Care plan (EHC) and "*children who are in public care*" is comprised of. The school has thanked me for highlighting this, and has agreed to clarify. It says that the alternate assessment would be "*a light touch (current) teacher assessment of the child's capabilities and the use of moderated professional judgment to allocate the child into a band*". This is intended to apply also to Looked After and former Looked After children. **The arrangements will need to be revised in order to clarify these points. I am grateful to the school for its cooperation in this matter.**

79. The second matter of concern was that arrangements did not appear to set out the process for requesting admission out of the normal age group. Paragraph 2.17 of the Code requires that "*admission authorities **must** make clear in their admission arrangements the process for requesting admission outside of the normal year group*". The school has acknowledged that is an oversight for which it has apologised. The school says that it is happy to amend as necessary. The school has sent suggested wording for the revision.

Unfortunately, I am not able to tell schools the exact wording of any revisions they must make. My functions are limited to making findings about whether arrangements are lawful. If I find that they are not, the admissions authority must revise the arrangements, but I cannot dictate the specific nature of any revisions. I am in no way seeking to be unhelpful here, and again I am grateful to the school for its cooperation in this matter. **The arrangements will need to be revised in order to set out the process for requesting admission outside of the normal year group. I am grateful to the school for its cooperation in this matter.**

80. In summary, I partially uphold this objection, and the arrangements will need to be revised. I have also identified other aspects of the arrangements which will also need to be revised using my jurisdiction under section 88I of the Act. The revisions I have identified primarily relate to aspects of the arrangements which are not sufficiently clear, or omissions. Because the arrangements must be clear at the point when parents register their children to sit the banding assessment, the arrangements must be revised as quickly as possible and, in any event, by 13 September 2019 which is the deadline for parents registering their child to undertake the banding assessment. The school's website states that term starts on 2 September 2019 for staff, so there will be sufficient time to revise the arrangements before 13 September 2019.

81. Had I concluded that fundamental changes of substance needed to be made, I would have required the arrangements to be revised for admission in 2021. However, on the basis of the evidence I have, the arrangements do not require substantial revisions, and it is reasonable for the school to make the revisions I have specified before the arrangements formally come into operation.

Summary of Findings

82. For the reasons set out above, I have made the following findings:

- The arrangements do not conform to paragraph 1.32(c) of the Code because they do not provide that reasonable steps must be taken to inform parents of the outcome of the banding assessment prior to the closing date for secondary school applications. The school will need to comply with this requirement and revise its arrangements to make clear that it will do this.
- The arrangements do not conform to paragraphs 15a, 15d and 1.7 of the Code because they do not provide for all applicants in the normal admissions round to be ranked against oversubscription criteria.
- The arrangements do not conform to paragraph 14 of the Code because they are unclear about the aim of the banding assessments. The arrangements will therefore need to be revised so that they are clear in relation to this point.
- The arrangements do not conform to paragraphs 1.8 and 14 of the Code as the naming of Sowerby Bridge Village Primary School is unreasonable. This is because

this school does not agree to being named as a feeder school. The arrangements will therefore need to be revised in order to remove this school from the list of named feeder schools.

- The arrangements do not conform to paragraph 14 of the Code because the operation of the waiting list is unclear. The arrangements will therefore need to be revised so that they are clear in relation to this point.
- The arrangements do not conform to paragraph 2.17 of the Code because they do not make clear in their admission arrangements the process for requesting admission outside of the normal year group. *The arrangements will therefore need to be revised so that they are clear in relation to this point.*
- The arrangements do not conform to paragraph 14 of the Code because the supplementary information relating to the banding arrangements is part of the arrangements, and is not published on the school's website alongside the rest of the arrangements.

83. Based upon the evidence available to me, I have not found that the adoption of banding in the form in which it has been adopted is unreasonable. I have not found that the operation of the banding arrangements is likely to disadvantage unfairly any ethnic group or other identifiable group. Neither have I found that the adoption of the named feeder schools is unreasonable (other than in respect of Sowerby Village Primary School), or that the naming of these specific schools will unfairly disadvantage Muslim applicants. This latter point does, though, remain to be seen.

Determination

84. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by The Trinity Multi Academy Trust for Trinity Academy Sowerby Bridge, Calderdale.

85. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

86. 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 I specify an alternative timescale. In this case I determine that the arrangements must be revised as quickly as possible and, in any event, before the date upon which parents are required to register their children for the banding assessment which is 13th September 2019.

Dated: 15 August 2019

Signed:

Schools Adjudicator: Dr Marisa Vallely