



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3952

**Objectors:** Delta Academies Trust

**Admission authority:** Trinity Multi Academy Trust for Trinity Academy  
Bradford

**Date of decision:** 2 September 2022

## Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2023 determined by Trinity Multi Academy Trust for Trinity Academy Bradford.

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 an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by the following dates:

- Revisions needed to make clear the provisions relating to alternative assessments and reasonable adjustments must be made as quickly as possible, and before 19 September 2022, which is the date of the banding assessment.
- Revisions needed to make clear the provisions relating to priority for looked after and previously looked after children; the method of determining priority as between applicants falling within each oversubscription criterion; and determination of the home address for children of separated parents must be made as quickly as possible and before 31 October 2022, which is the closing date for applications.

## 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 Delta Academy Trust (the objector), about the admission arrangements (the arrangements) for Trinity Academy Bradford (the school), a co-educational academy school for pupils aged 11 – 16 for September 2023. The objection is to the adoption of pupil banding.
2. The local authority (LA) for the area in which the school is located is the City of Bradford Metropolitan District Council. The LA is a party to this objection. Other parties to the objection are the objector and Trinity Multi Academy Trust (the trust).
3. There have been objections to two other secondary schools within the same Multi Academy Trust this year, both of which concern the adoption of banding arrangements for the first time for September 2023 admissions. These are Trinity Academy St Edwards, Barnsley (ADA3917-3920 / ADA3923 / ADA3937-3938 / ADA3947 3948 / ADA2953-3954 / ADA3963-3965 / ADA4067 / ADA4068) and Trinity Academy Cathedral Wakefield (ADA3590 -3951). The trust operates banding arrangements at two of its other schools, namely Trinity Academy Halifax and Trinity Academy Grammar.

## Jurisdiction

4. The terms of the academy agreement between the 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 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 12 May 2022. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and 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

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
  - a. a copy of the minutes of the meeting of the trust at which the arrangements were determined;
  - b. a copy of the determined arrangements, which include Supplementary Guidance;
  - c. the objector's form of objection dated 12 May 2022; and
  - d. the trust's response to the objection and supporting documents.

## The Objection

7. The objection is in respect of the school's adoption of pupil banding for the first time for admissions to the school in September 2023. There are essentially five key points:
- a. The consultation process which proceeded the adoption of pupil banding was flawed (Paragraphs 1.45 – 1.48 of the Code).
  - b. The complexity of the arrangements operates to cause unfairness to applicants from disadvantaged social groups (Paragraph 14 of the Code).
  - c. Applicants from disadvantaged social groups are more likely to be disadvantaged by making late applications (Paragraph 14 of the Code).
  - d. The complexity of the arrangements is such that parents will be unable to assess how likely it is that their child will be offered a place if an application is made (Paragraphs 14, 1.25, 1.26 and 1.27 of the Code).
  - e. No adjustments are made to ensure that the banding assessment is made accessible to children with special educational needs and disabilities (Paragraphs 1.31 and 1.32b. of the Code).

## Other Matters

8. There were three other matters in the arrangements which appeared not to comply with the requirements of the Code. These related to the level of priority for some previously looked after children; a lack of clarity as to the order of priority within the oversubscription criteria; and the provisions for determining the home addresses of children whose parents are separated which make the assumption incorrectly that the parent in receipt of child benefit is the parent with whom the child lives for the majority of the school week. The trust has agreed to revise these provisions. I am grateful to the trust for its cooperation in these matters.

## Background

9. The school is located in the large village of Queensbury in the Metropolitan District of Bradford. It is a co-educational secondary school for pupils aged 11 – 16, and has a Published Admission Number of 180.

10. The school adopted its present name after becoming part of Trinity Multi Academy Trust in February 2021. It had become an academy in September 2016 and was formerly named Queensbury Academy. The school was rated as Inadequate by Ofsted in June 2019. The Ofsted report indicated that the proportion of disadvantaged pupils at the school was higher than average; the proportion of pupils with special educational needs and disabilities (SEND) was above average; the proportion of pupils who had an education, health and care plan (EHCP) was below average; the majority of pupils were from White British backgrounds; and the majority of pupils spoke English as a first language. Data

published on GIAS (Get Information About Schools) relating to Queensbury Academy indicated that pupil absence was high and that the Progress 8 score was well below average. There is no Key Stage 4 data available for the school on GIAS, except that the percentage of pupils eligible for free school meals is 27.5.

11. The school's admission arrangements are set out below. I have highlighted in bold the sections which are pertinent to the objection:

"Procedure for allocating places, including dealing with over subscription

Places will be allocated on the basis of Fair Banding as permitted by the Department for Education (DfE) School Admissions Code.

Students applying to TAB (Trinity Academy Bradford) will be invited to sit a non-verbal assessment (based on cognitive ability) produced by a reputable national organisation.

For further details please see Supplemental Guidance.

**Applicants who sit the fair banding assessment are considered for admission first.**

**Any applicants, including late applicants, who miss the September fair banding assessment will be given a further opportunity to sit a fair banding assessment in November. Note: Applicants can only sit the fair banding assessment once. Any applicants who choose not to sit the fair banding assessment will be 'non-banded' and 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 (below).**

**How Fair Banding works.**

**The assessment is not a traditional entrance exam which children either pass or fail. It is done to ensure that our intake 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.**

Parents/cares of children who sit the fair banding assessment in September will be informed of their child's score (and the band they have been allocated to) prior to the national deadline for secondary school applications. Parents/carers of children who sit the later fair banding assessment will also be informed of their child's score (and the band they have been allocated to).

**Children in receipt of an Education, Health and Care plan, children who are in public care – 'Looked After' and children who were previously looked after, who do not take the assessment will be allocated to the appropriate band on the basis of an alternative appropriate assessment e.g. a current teacher assessment of the child's capabilities, and the use of moderated professional judgment, to allocate the child into a band.**

**Children in receipt of an Education, Health and Care plan that names TAB as the appropriate school, will be admitted before any other children.**

Oversubscription criteria: In the event of the Academy being oversubscribed (after the admission of children with an Education, Health and Care Plan where the Academy is named), priority for admission will be given to those children who sit the fair banding assessment and who meet the criteria in the order set out below:

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 whose siblings currently attend the academy and who will continue to do so on the date of admission.

3. Children who attend named feeder schools - Foxhill Primary School, Keelham Primary School, Russell Hall Primary School, Shibden Head Primary Academy and Stocks Lane Primary School.

4. Children of staff employed at the academy.

5. Other children.

Should any band not fill with students assessed and designated to that ability banding, then students will be drawn from other bands in the following order:

Band 4 – if no Band 4 children are available, children from Band 3 will be offered places; if no Band 3 children are available, children from Band 2 will be offered places; if no Band 2 children are available, children from Band 1 will be offered

places; if no Band 1 children are available, places will be offered to non-banded children.

Band 3 – if no Band 3 children are available, children from Band 4 will be offered places; if no Band 4 children are available, children from Band 2 will be offered places; if no Band 2 children are available, children from Band 1 will be offered places; if no Band 1 children are available, places will be offered to non-banded children.

Band 2 – if no Band 2 children are available, children from Band 3 will be offered places; if no Band 3 children are available, children from Band 1 will be offered places; if no Band 1 children are available, children from Band 4 will be offered places; if no Band 4 children are available, places will be offered to non-banded children.

Band 1 - if no Band 1 children are available, children from Band 2 will be offered places; if no Band 2 children are available, children from Band 3 will be offered places; if no Band 3 children are available, children from Band 4 will be offered places; if no Band 4 children are available, places will be offered to non-banded children.

Note - The address given must be where the child and parents live permanently. It must not be the child minder's, grandparent's or other relative's address. If parents share custody of a child, then the school may request to see the court order, child tax credit letter, child benefit letter, medical card or other evidence to establish where the child is resident for the majority of the time during the weekdays. If there is joint custody for the child, then the address of the parents receiving the child benefit is used. Parents may be required to provide proof of permanent address."

## Consideration of Case

12. The objector has raised serious concerns about the potential effect of the adoption of pupil banding within the particular locality of the school. The trust also adopted priority for children attending named feeder schools as an oversubscription criterion for the first time for September 2023 admissions. There is no objection or comment made about this. I am not sure what the oversubscription criteria were for September 2022 admissions, but the adoption of feeder schools may equally affect the school's intake. The feeder schools all appear to be within reasonable proximity to the school (the nearest being 0.4 miles and the furthest being 2.6 miles). A map would have been helpful.

13. It is said by the objector that, in the Index of Multiple Deprivation 2019, Bradford District is ranked the 5th most income deprived and 6th most employment deprived local authority in England; 22 per cent of children are living below the poverty line; and 13 per cent of working age people have no qualifications. For families who are already experiencing barriers to engaging with the existing Common Application Form process, the complexities and additional processes involved in pupil banding will effectively render the

school inaccessible to disadvantaged children. The objector raises five main points, which I have considered below under separate headings.

14. I pause here to say that my consideration of this objection has been hampered significantly by a failure of the local authority to provide the information requested in my Jurisdiction and Further Information letter of 17 June 2022, despite several reminders. The information requested was:

- The number of first and second preferences received for the school in the last three years, and the number of places offered and accepted.
- The number of late applications received for the school for admissions in the last three years.
- A list of Bradford secondary schools and a map of their locations.
- A list of the number of applicants admitted to each Bradford secondary school in the last three years and the Published Admission Numbers for each of these schools.
- If local children are unable to obtain places at Trinity Academy Bradford, which alternative secondary schools would be able to offer places.
- How far are these alternative schools likely to be from an applicant's home address.
- Whether the local authority considers that the school's adoption of banding arrangements might cause a risk that the authority will be unable to ensure there are sufficient secondary school places available for children in its area.

15. Based upon the information published in the Local Authority Prospectus for 2021/22 admissions (the latest version available), I note that four schools in the Bradford Metropolitan District area have adopted banding arrangements. These are Dixon's McMillan, Dixon's City and Dixon's King's Academies and Bradford Girls Grammar School. It cannot, therefore, be said that banding is a new concept for secondary schools in the Bradford area. These four other schools are heavily oversubscribed, so it cannot be said that parents have been deterred from making applications to these schools because they use a banding assessment. I also note that the local authority is not an objector in this case (unlike in the case of the objections to Trinity Academy schools in Barnsley and Wakefield).

16. It is also significant that, because banding is being adopted for the first time for September 2023 admissions, there can be no evidence of its actual effect. My starting point has to be that banding is a form of selection which is expressly permitted by the Act and the Code. The trust operates these same banding arrangements in two of its other schools because it says that this results in the intake of those schools correctly reflecting the characteristics of those children who apply for a place. The trust is adamant that banding does not disadvantage children from deprived social groups. In order to render the adoption of banding in itself non compliant with the Code its operation would need to be unfair or, in this case, more likely than not to operate unfairly. (If it were the case that the

banding arrangements were not described with sufficient clarity or failed to comprise adjustments for applicants with disabilities, revisions could be made to remedy this whilst still continuing to operate the banding process).

17. When considering the question of unfairness, adjudicators tend to ask the question of who is being affected unfairly and why. What is alleged here is an unfairness of the most serious kind, namely that the additional complexity introduced by the adoption of banding will in effect render this school inaccessible to children in the most disadvantaged social groups; and that this outcome is more likely than not as the school is located in an area where there are many such local children. Paragraph 14 of the Code provides 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”.

18. The form of banding which has been adopted by the school is expressly permitted under section 100 of the Act and paragraph 1.25 a) of the Code. Paragraphs 1.25 - 1.28 of the Code say:

“1.25. 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.

1.26. 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”.

1.27 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.

1.28 Where the school is oversubscribed:

- a) looked after children and previously looked after children must be given top priority in each band, and then any oversubscription criteria applied within each band, and
- b) priority must not be given within bands according to the applicant’s performance in the test.



19. In the absence of any evidence of the effect of the operation of banding, I have endeavoured to assess how likely it would be that the objectors' concerns will become realisations. I therefore asked the trust about the outcome of introducing banding in the two other trust secondary schools which already operate the form of banding which has now been adopted for the school. These schools are Trinity Academy Halifax and Trinity Academy Grammar, each of which appears from its website to have achieved a World Class School Quality Mark and accreditations for improvement. I am cautious about reaching firm conclusions about the likely effect of introducing banding in this school based upon the effect this has had upon other schools, nevertheless it is helpful in the absence of any evidence at all about what the actual effect will be upon children for whom Trinity Academy Bradford is their local school and parents who may be expecting that their children will be admitted to the school.

20. The trust says that, in the absence of KS2 data, all three schools have CATs (Cognitive Assessment Tests) results which are below the national average and their cohorts have a particular weakness with spatial ability (shape and space). The mean Standard Ability Score at TAB (Trinity Academy Bradford) was 95.6 this year, vs 95.2 at TAG (Trinity Academy Grammar) and 97.2 at TAH (Trinity Academy Halifax).

“The ethnic make-up of the school at TAB is diverse. For example, around three fifths (59%) of the cohort are White British (vs around one third of the cohort at TAG and 88% at TAH). At TAB, 15% of pupils are of Pakistani ethnicity (this is 36% at TAG and just over 1% at TAH). The remaining quarter of pupils come from a diverse range of ethnicities. At TAB, one quarter of the cohort have English as an additional language (this compares to half the cohort at TAG and less than 5% at TAH).

TAB has a slightly lower level of deprivation than TAH (although still at a higher level of deprivation, compared to the national picture). At TAH, around 2 in 5 pupils are eligible for Pupil Premium (41%), compared to 32% at TAB (nationally, approximately 28% of pupils have FSM Ever 6<sup>1</sup>). Likewise, both schools have a similar proportion of pupils that are currently eligible for FSM, with around 3 in 10 pupils currently eligible for FSM – this figure is 28% at TAB and 32% at TAH. At TAG, almost half (46%) are currently eligible for FSM.

By contrast, the pupils at TAH and TAG both live in areas which are significantly more deprived than TAB. For example, 63% of pupils at TAH and 59% at TAG live in the bottom two deciles of the IDACI index (vs 24% at TAB). The picture varies, depending upon the specific deprivation index. So, for example, 73% of pupils live in areas in the bottom two deciles of the country for Crime (this is 78% in the bottom

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<sup>1</sup> FSM Ever 6 is historic eligibility for free school meals. Pupils classed as eligible for free school meals at any point since or 6 years after determined to be eligible.

two deciles at TAH and 65% at TAG). By contrast, a quarter of TAB pupils live in an area in the bottom two deciles for employment”.

21. The trust says it has seen no evidence of the manifestation of the concerns expressed by the objector in the other trust schools which use banding arrangements of this type. It says that banding has been in operation at TAH and TAG for three and two years respectively. The trust has monitored the effect of banding using several metrics.

**“Average distance from school**

Avg. distance from school	TAH	TAG
FB cohort	1.06 miles	1.62 miles
Non-FB cohort	1.20 miles	1.62 miles

As you can see, pupils either live nearer to the school as they did before FB was introduced (as at TAH), or the same (as at TAG). Moreover, when broken down to 1 mile, 0.5 mile and 0.3 mile from each school, the pattern remains favourable.

The characteristics of the cohorts have not altered either:

The percentage of **children who are looked after/previously looked after** has increased to 3.6% (from 2.0%) and 1.5% (from 0.8%) at TAH and TAG respectively.

The same pattern can be seen with **SEN – EHC** pupils too, whilst **PP cohorts** have increased to 43.4% (from 40.5%) and 54.4% (from 52.4%) at TAH and TAG respectively.

Finally, we also measured **reading ages** and it has gone slightly down at TAH (7 months) and slightly up at TAG (5 months).

It is probably also worth mentioning that **first choice preferences** have also remained relatively stable since before and after FB was introduced e.g. 395 first choice applications at TAH, compared to a six-year rolling average of 390.

I would emphasise that the policy was purposefully operated for 2-3 years at different Trinity schools precisely so the Board of Directors could monitor whether it brought with it some unforeseen, unintended negative consequences. We believe that the above conclusively proves that not to be the case”.

22. I asked the trust why it has chosen to adopt the particular form of banding it uses. It says that the cohort that entered the school in September 2021 was academically below the national average (using CATS outcomes, in the absence of KS2 data). The trust says that

“This mirrored the usual Trust profile i.e. being below the NA upon entry, and was the reason we discounted ‘the national ability range’ option i.e. 25% from each band (as it could disadvantage applicants from the local area). Of the two remaining options, we feel ‘the full range of ability of applicants for the school’ is fairer than ‘the range of

ability of children in the local area' given that the local children are prioritised already via our oversubscription criteria (and that has clearly been borne out on the two schools in which we have operated FB to date).

The main benefit of the policy is that it has delivered what it proposed to do – **ensuring that the cohort of pupils admitted to the academy directly matches the ability range of those applying** – whilst not disadvantaging the local community. There is copious evidence to support the latter and the policy has enabled the schools to adopt what the Trust considers to be the fairest method of admissions.

For the September 2021 intake the average distance was 1.7 miles, the furthest 7.5 miles. For the 2022 intake those figures are 1.0 miles and 5.9 miles. The furthest distance measurement is significantly above that recorded at both TAH and TAG; the school therefore isn't as 'local' as some objectors may be stating".

23. The trust maintains that due to its oversubscription criteria, it does "broadly" admit the ability range of the local area. This is said to be facilitated by working with local partner primary schools in order to ensure that the vast majority of local pupils sit the banding assessment in the comfort and familiarity of their own classroom, and ensuring that distance from the academy is prioritised in the oversubscription criteria. The arrangements do not provide that priority between applicants who fall within a particular oversubscription criterion is determined by proximity of home address to the school. I have raised this point with the trust using my jurisdiction under 88I of the Act. The trust has agreed to revise the arrangements to make clear that priority within the oversubscription criteria is determined by proximity. The arrangements do prioritise applicants attending local feeder schools who may well live locally, given that three of them are less than a mile away from the school.

24. I asked the trust whether, in light of the concerns expressed by the objector, it might consider adopting banding arrangements which reflect the ability of children in the local area, as opposed to the ability of the children who sit the banding assessment. The trust considers that the particular form of banding adopted when used in conjunction with oversubscription criteria which prioritises local children achieves the desired outcome. It is also said that "the metric of 'the range of ability of children in the local area' is likely to be a more problematic measurement than a simple, light-touch 45-minute multiple choice assessment administered in a range of local primary settings".

25. The trust anticipates the vast majority of applicants will sit the banding assessment in their own primary school in September. It has made contact with a number of local primary schools, and received positive responses from the leaders of those schools. The aim is that all local primary children have the chance to sit the banding assessment in the familiar surroundings of their own classroom, with their Y6 teacher and a member of staff from Trinity Academy Bradford in close proximity to explain the purpose of the banding assessment and answer any questions. To date, all five of the academy's feeder primary schools have confirmed that they are happy to support and facilitate this process. There is also the opportunity to sit the assessment on a Saturday morning at the school for those who would prefer this, and further bespoke follow-up assessment(s) for those that missed the opportunity and/or who have moved into the area.

26. I will now consider each of the aspects of the objection in turn.

**a. Consultation (Paragraphs 1.45 – 1.48 of the Code).**

27. The consultation process leading up to the determination of the 2023 admission arrangements for the school is said not to have been conducted in accordance with the requirements of the Code and the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the 2012 Regulations). In particular, it is alleged that the Delta Academy Trust, which is the admission authority for five schools in the Bradford area (Greengates, Lowerfields, Ryecroft, Southmere and Whetley) was not consulted directly.

28. Paragraphs 1.45 – 1.48 of the Code provide, insofar as is relevant:

“1.45 When changes are proposed to admission arrangements, all admission authorities must consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year...

1.46 Consultation must last for a minimum of 6 weeks and must take place between 1 October and 31 January in the determination year.

1.47 Admission authorities must consult with:

a) parents of children between the ages of two and eighteen;

b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;

c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);

d) whichever of the governing body and the local authority is not the admission authority;

e) any adjoining neighbouring local authorities where the admission authority is the local authority; and

f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.

1.48 For the duration of the consultation period, the admission authority must publish a copy of their full proposed admission arrangements (including the proposed PAN) on the school’s website or its own website (in the case of a local authority) together with details of where comments may be sent and the areas on which comments are not sought. Admission authorities must also send, upon request, a copy of the proposed admission arrangements to any of the persons or bodies listed above inviting comment. Failure to consult effectively may be grounds for subsequent complaints and appeals.”

29. The trust has said that the consultation process included the following: a letter to all parents and carers of pupils attending the school; emails to all Bradford primary schools, all Bradford secondary schools, all school staff and governors and the local authority. A public notice was displayed within the Telegraph and Argos newspaper, both on-line and broadsheet, for one week and an Information Evening was held at the school on Tuesday 11 January 2022 (two sessions ran at both 4.30pm and 6.00pm).

30. The trust's view is that, since each of the schools in the Delta Academy Trust were consulted directly, this is sufficient to comply with the consultation requirements as set out the 2012 Regulations and the Code. The trust believes that it is "common practice (and a reasonable expectation) to assume that including these academies in our consultation can also be taken as consulting with the Trust as the admissions authority... I think [this] is an ill-judged attempt to trip up the thorough TAB consultation process on an unreasonable technicality ... every single admission consultation across the five LAs in which we work have always directed their notice and documentation to the academy(ies) that Trinity has within that LA (rather than the central Trust offices), which all parties to date have accepted as reasonable and constitutes thorough and proper consultation".

31. I have advised the parties in my Jurisdiction and Further Information letter that, whilst it is open to an adjudicator to determine that there has been a failure to consult in accordance with the relevant legal requirements, the adjudicator cannot impose a requirement upon an admission authority to re-consult after it has determined the arrangements even if the consultation has not been conducted in accordance with the requirements of the 2012 Regulations and the Code. Nor can the adjudicator require the admission authority to re-instate the previous year's arrangements.

32. Whilst technically the objector is correct that the legal requirement under paragraph 1.47c) of the Code is to consult "all other admission authorities within the relevant area", which would include the Delta Academy Trust, all I can do is to state this as a fact. I note that, whilst the objector states that it was not consulted directly, what is not actually said is that the objector was unaware of the proposed change to the admission arrangements for Trinity Academy Bradford. Neither the governing bodies of the schools in the Delta Academy Trust (who I understand were directly consulted), nor the Delta Academy Trust responded to the consultation. I believe this to have been a genuine error on the part of the trust rather than any attempt to revise its admission arrangements without the knowledge of the local admission authorities.

33. I do have concerns about whether the trust did enough to comply with the requirement in paragraph 1.47 to consult with parents of children between the ages of two and eighteen. I note that a public notice was displayed within the Telegraph and Argos newspaper, both on-line and broadsheet, for one week and an Information Evening was held at the school, however my view is that more should have been done to notify parents as they may be directly affected. A commonly used method is to request the local schools who are consulted to forward the consultation email to parents of children at their schools. I note that there were only three responses to the consultation, and that all three were from local parents. Nevertheless I uphold this aspect of the objection.

## **b. Complexity and disadvantage (Paragraph 14 of the Code).**

### Complexity

34. The admission arrangements are said by the objector to be complex and difficult for some parents to understand, particularly members of the local community who are from disadvantaged social groups. Parents are expected to read an additional document entitled 'Fair Banding Assessment Supplementary Guidance - Trinity Academy Bradford' and then submit an application for their child to sit a banding assessment in addition to applying via the local authority website for a secondary school place.

35. As mentioned above, paragraph 14 of the Code requires that 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 objector says that there is no acknowledgement or mitigation in the admission arrangements of the disproportionate impact on families who are already educationally disadvantaged. These families are said to be predominantly from disadvantaged social groups.

36. In response, the trust states that it strongly believes that the arrangements and the supplementary guidance are clearly understood by parents, given the range of help and resource offered by the trust. This help is said to comprise significant bespoke support, including translations, videos and individual explanations wherever required (although I note that the arrangements do not explain this clearly). The trust says it has extensive experience in administering banding arrangements in areas of deprivation with diverse ethnic backgrounds and historically difficult to reach communities, as well as extensive experience of effectively delivering the process without any adverse consequences on local and/or disadvantaged communities. It says that it is already doing this at two of its other secondary schools. The trust claims that there is "significant evidence that this has not adversely impacted on any disadvantaged groups", because these other schools continue to admit disadvantaged children.

37. I do not uphold this aspect of the objection on the basis that the arrangements are unclear. In my view, they are necessarily complex but they are also as clear as they can be, and the trust is prepared to go to some lengths in order to provide clarity for parents. It is made absolutely clear that the assessment is not used to give priority to applicants of higher levels of ability. There is a video which is immediately accessible as part of the admission arrangements, and which explains in clear terms how the banding assessment works. The arrangements are also clear about the cut-off date for registration for the assessment and what happens if an applicant has not been allocated to a band. There is a section in the arrangements which describes what happens should it be the case that any band does not fill with applicants who have been allocated to that ability banding. This appears complex, but it is not unclear. Now that the trust has secured the agreement of the feeder schools to facilitate the administration of the banding assessment, the clarity of the arrangements could be improved by stating this fact.

## Disadvantage

38. Applicants who are not allocated to a band are placed in a less favourable position because they are classed as 'non-banded' and will not be offered places until all of the banded applicants have been accommodated. The objector considers that the applicants most likely to find themselves in this unfavourable position are those from disadvantaged social groups. It is also suggested by the objector that applicants from these groups are less likely to read the supplementary guidance or make an application to register their child to sit the banding assessment.

39. In response, the trust says that it "strongly believes that the arrangements and the supplementary guidance are clearly understood by parents, given the range of help and resource we offer". The trust emphasises that it has "significant recent experience" of administering the banding assessment in similar circumstances across two other secondary schools. Both are said to serve localities which have a high number of families from disadvantaged social groups and families who do not apply for a school place, or do not apply by the required deadline. In these other schools, banding has been implemented and operates successfully without any group being disadvantaged. This is said to be, in part, because the trust enjoys strong positive relationships with the local primary schools and they facilitate the banding assessment in their schools. This means that "the vast majority of pupils", unless they opt out of the banding assessment, sit it in the familiar surroundings of their own Year 6 classroom, with their teacher, teaching assistant and a member of the Trinity administrative team present. The nature of the assessment is explained clearly (light touch, multiple choice and only 45 minutes long). It is also explained that a pupil's performance in it has no bearing on his/her chances of being offered a place at the school.

40. The trust reiterates that applicants who do not sit the banding assessment on the main date in October and those who apply late will be given a further opportunity to sit the assessment in early December. Additional opportunities are also offered for applicants who move into the area after the deadline for registration or after 31 October 2022.

41. In order to uphold this aspect of the objection, I would need to be satisfied that an otherwise lawful criterion for determining the allocation of places will operate to cause an unfairness to applicants from disadvantaged social groups. Whilst I accept the validity and seriousness of the objector's concerns, I do not agree that the banding arrangements themselves will cause any such unfairness. In order for me to prevent this school from implementing banding arrangements (which the trust has operated successfully in other schools located in areas of disadvantage), I would need to reach a conclusion that banding is unlawful in the context of this school. I am effectively being asked to do this on the basis that some parents will not read the arrangements and will not register their children to sit the assessment. I cannot make a finding that the banding arrangements are unlawful on the basis of the information I have. I say this particularly as the trust has now been able to ensure that applicants attending the feeder schools will be assessed without their parents needing to take any additional steps. The trust is prepared to go to considerable lengths to try to ensure that applicants from disadvantaged social groups are not placed at a

disadvantage, and has done so for the other two schools at which banding has been adopted without the consequences which the objector appears to consider are likely.

42. The arrangements are as clear as they can be in explaining the purpose of banding and what parents need to do in order to register for the assessment; the supplementary guidance, which is published as part of the admission arrangements states clearly in the first line that parents of pupils interested in applying for a place will need to register their child to sit a non-verbal reasoning assessment (a Fair Banding Assessment) no later than Monday 19 September 2022, and that the assessment will take place on Saturday 8 October 2022 ; the registration form is clear and straightforward; the trust will administer the assessment in primary schools in a low key manner; and offers further opportunities to sit the banding assessments for children whose parents miss the deadlines. As I have already said, the arrangements should now make clear that children who attend the feeder schools will be able to sit the assessment in their own schools without the need for parents to register them. The trust operates banding arrangements in two other secondary schools. The intake of children from socially disadvantaged groups has not reduced following the adoption of banding. There is no basis upon which I could uphold this aspect of the objection.

43. I will add briefly that, if local primary schools and other stakeholders encourage parents from local disadvantaged communities to apply for places at the school and to sit the banding assessment, the school's intake will be reflective of the area. The more applications there are from lower ability applicants, the greater the percentage of their intake will be.

**c. Late applications (Paragraph 14 of the Code).**

44. Every year there are said to be a high number of families who do not apply for a school place, or do not apply by the required deadline. These are families from disadvantaged social groups. The arrangements are said to place children from these groups at a further disadvantage because parents who apply after the deadline for sitting the banding assessment have lower priority for admission.

45. Many sets of admission arrangements provide that late applicants will not be offered places until after all on-time applicants have been offered places. The arrangements do not say this. Therefore, there is no provision for treating late applicants any differently to those applicants who apply on time. I understand that this is not intentional, and may be revised, but I cannot uphold this aspect of the objection because there is no disadvantage to late applicants under the admission arrangements as they stand.

**d. The complexity of the arrangements is such that parents will be unable to assess how likely it is that their child will be offered a place if an application is made (Paragraphs 14 and 1.25, 1.26 and 1.27 of the Code).**

46. The objector considers that the complex nature of the academy's banding arrangements will not allow parents to have a reasonable estimation of whether their child will be offered a place at the school when making their choice of schools. It is said that the



description of the process that will be followed “should any band not fill with pupils assessed and designated to that ability banding” is very complex and overlapping. There are sixteen possible permutations as to how a child assessed in any of the four bands could be allocated a place under these arrangements”.

47. It is also alleged that the arrangements are potentially misleading. They refer to the Fair Banding Assessment as “similar to an IQ score”, therefore the lack of familiarity with banding arrangements and the barriers to engagement by parents all lead to “a significant risk that the arrangements will be perceived by parents and the community as representing a means of choosing higher ability pupils”. The objector considers that the effect of this perception risks being compounded by the decision to band by the range of ability of applicants rather than the other options set out in paragraph 1.25 of the Code, namely by the range of ability in the local area or the national ability range.

48. In response, the trust reiterates that it has made a considerable effort to ensure that the arrangements are as clear as they can be, and that the application process makes allowances for parents who have difficulties in accessing the process. It might be difficult for a parent to assess how likely it would be that their child would be offered a place at the school because the parent could not be aware which band their child would be allocated to, or how many places will be offered to applicants within the band. However, it is not a requirement of paragraph 14 of the Code that admission arrangements must make clear whether or not a place will be offered. The requirement is that parents must be able to understand what the process is for the allocation of places at the school and what they need to do to engage with that process. There are a number of examples of oversubscription criteria which are lawful and expressly permitted under the Code (for example random allocation and proximity of home to school). It would not be possible where places are allocated randomly for parents to know how likely it will be that their child will be allocated a place. It is not required that the outcome of such criteria be described, merely that the process for determining the outcome is explained clearly. In my view, the trust has taken care to ensure this is the case.

49. As to whether the arrangements can be construed as misleading, whilst I understand the point being made, the admission arrangements and the video state clearly that the banding assessment is not a traditional entrance exam which children either pass or fail. This is reiterated when children sit the banding assessment. I do not uphold this aspect of the objection.

**No adjustments are made to ensure that the banding assessment is made accessible to children with special educational needs and disabilities (Paragraph 1.32b. of the Code).**

50. Accessibility is said to be an important way of securing inclusivity and ensuring that the parents of children of all abilities, or with additional needs, feel comfortable in asking their children to complete an assessment process and in requesting the reasonable adjustments their children are entitled to receive and schools are required to offer.

51. Paragraph 1.31 of the Code provides that tests for all forms of selection must be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability. Paragraph 1.32b) of the Codes says: Admission authorities must ensure that tests are accessible to children with special educational needs and disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation.

52. The trust says in response that children with EHCPs do not have to sit the banding assessment and that it makes all adjustments necessary for any applicant with a disability. The trust says it has "experience of this nature and work(s) with school and/or parent/carers to ensure that the FBA is accessible to all. Moreover, even though the outcome of the FBA has no bearing on the applicants' chance of entering the academy, we still look sympathetically on any situation where an applicant, who does not have an EHCP, may have difficulty accessing the FBA. When any issues are raised by the school and/or parent/carer, we would allow a substitute teacher assessment to be used to allocate that pupil to a band. As you would expect, we address any issues raised on a case-by-case basis. Finally, as the outcome of the FBA does not impact on a pupil's chance of entry into the academy, we do not generally offer additional time or the like (which might be the case in an official examination, as an example), although we have been open to such requests in the past if the primary school thought there was a social need".

53. In order to comply with the Code, the banding arrangements must give an accurate reflection of the child's ability or aptitude, irrespective of disability and must be accessible to children with special educational needs and disabilities. The arrangements provide expressly that children with an EHCP and Looked After and Previously Looked After Children who do not take the assessment will be allocated to the appropriate band on the basis of an alternative appropriate assessment, for example a current teacher assessment of the child's capabilities, and the use of "moderated professional judgment".

54. I understand the point made by the trust that it is seeking to determine an accurate level of children's ability rather than assisting children to do as well as they can, as would be the cases for a test of high ability. The more children there are who are assessed as belonging to a lower ability band, the higher the percentage of children in that band who will be eligible for admission. Arguably, it is not in the interests of lower level ability applicants for them to be assessed as being at a level of ability which is higher than that which they are capable of operating at in the day-to-day mainstream school environment.

55. Having said this, my view is that the arrangements need to be clearer about the fact that alternative assessments will be accepted where appropriate because this appears to be applied in circumstances which are wider than those set out in the arrangements, and does need to be the case. The arrangements must make clear that additional steps will be taken to ensure that the assessment is accessible to applicants with disabilities; that alternative appropriate assessments will be used where necessary; that the child's parents or primary school may request an alternative assessment or reasonable adjustment; and

the criteria for deciding whether to offer an alternative assessment. For these reasons, I uphold this aspect of the objection.

## Summary of Findings

56. I find that some aspects of the consultation process which was conducted prior to the determination of the 2023 admission arrangements were insufficient to comply with the requirements of the Code and the 2012 Regulations. I also find that the arrangements are insufficiently clear with regard to the fact that the banding assessment will be carried out in local primary schools, the closing date for submission of the CAF, the assessment arrangements for children with disabilities and the availability of reasonable adjustments.

57. I find that the consultation which was conducted prior to the determination of the admission arrangements did not meet the requirements of the Code in some respects. I also find that the arrangements need to be clearer about the availability of alternative assessments and reasonable adjustments, and what parents and schools need to do in order to request additional help for their child in accessing the banding assessment, or suggesting that an alternative assessment might be appropriate.

58. I have no basis upon which to make a finding that the banding arrangements will operate to disadvantage unfairly applicants from any disadvantaged social group. I find that the arrangements explain clearly that the banding assessment is not a method of selecting children of high ability. The arrangements do not operate to ensure that any parent applying to the school will be able to predict the outcome of the application with certainty, however this is not a requirement of the Code. The relevant requirement is that the arrangements explain clearly the methodology for determining how places are offered, which they do, subject to what is said in the next paragraph.

59. The arrangements imply incorrectly that children who were previously looked after outside England are given lower priority than other looked after and previously looked after children; they are unclear as to how priority is determined within each oversubscription criterion; and contain an error in the methodology for determining the home address for children of separated parents.

## Determination

60. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2023 determined by Trinity Multi Academy Trust for Trinity Academy Bradford.

61. 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.

62. 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 the following dates:

- Revisions needed to make clear the provisions relating to alternative assessments and reasonable adjustments must be made as quickly as possible, and before 19 September 2022, which is the date of the banding assessment.
- Revisions needed to make clear the provisions relating to the priority for looked after and previously looked after children; the method of determining priority as between applicants falling within each oversubscription criterion; and determination of the home address for children of separated parents must be made as quickly as possible and before 31 October 2022, which is the closing date for applications.

Dated: 2 September 2022

Signed:

Schools Adjudicator: Marisa Vallely