



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3917, ADA3918, ADA3919, ADA3920, ADA3923, ADA3937, ADA3938, ADA3947, ADA3948, ADA3953, ADA3954, ADA3963, ADA3964, ADA3965, ADA4067, ADA4068

Objectors: A list of objectors is set out in paragraph 1.

Admission authority: The Trinity Multi Academy Trust for Trinity Academy St Edwards, Barnsley

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 St Edwards, Barnsley.

I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does 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. In this case I determine that the arrangements must be revised as quickly as possible and before 19 September 2022 which is the closing date for registration to sit the banding assessment.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), objections have been referred to the adjudicator by the persons and bodies listed in this paragraph about the admission arrangements (the arrangements) for Trinity Academy St. Edwards School (the school) for September 2023. The school is a co-educational non-selective academy school for pupils aged 11 - 16 designated as having a Church of

England religious character. The objection is to the pupil banding arrangements newly adopted by the school. The objectors are from the bodies listed below:

- Darton Academy,
- Delta Academies Trust,
- Horizon Community College,
- The HCAT Multi Academy Trust,
- Hoyland Common Primary School (part of HCAT),
- Horizon Academy,
- Worsborough Common Primary School,
- Milefield Primary School,
- Hoylandswaine Primary School,
- Holy Trinity Primary School
- The Roman Catholic Diocese of Hallam,
- Barnsley Council (2 objections),
- Outwood Grange Academies Trust,
- Northern Education Trust,

Another individual.

The parties to the objection are:

- 1.1. those listed in paragraph 1 who have made objections (the objectors);
- 1.2. Trinity Multi Academy Trust which is the admission authority for the school (the trust);
- 1.3. Barnsley Metropolitan Council (the LA) which is both the local authority for the area in which the school is located and an objector; and
- 1.4. The Church of England Diocese of Leeds (the diocese).

2. There have been objections to three other secondary schools within the same Multi Academy Trust this year each of which concerns the adoption of banding arrangements for the first time for September 2023 admissions. These are Trinity Academy Cathedral, Wakefield (ADA3950 – 3951), Trinity Academy Bradford (ADA3592) and Trinity Academy

Leeds (ADA3945, 3949, 3961-2). The trust already operates banding arrangements at two of its other schools, namely Trinity Academy Halifax and Trinity Academy Grammar.

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 trust, which is the admission authority for the school, on that basis. The objectors submitted their objections to these determined arrangements on various dates between March 2022 and May 2022. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

4. 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, supplementary documentation and video;
- c. the objectors' forms of objection made on various dates between April 2022 and May 2022, additional comments and supporting documents;
- d. information provided by the LA in its capacity as the local authority for the area in which the school is located;
- e. the trust's response to the objections;
- f. the diocese's response to the objection;
- g. a map of the area identifying relevant schools; and
- h. determinations ADA2965, ADA2970 and ADA3036 Trinity Academy Halifax and ADA3570 Trinity Academy Sowerby Bridge.

The Objection

7. A total of 16 objections has been made to the school's admission arrangements. They are all in the same, or similar, terms and they all relate to the banding arrangements adopted at the school for the first time for September 2023 admissions.

8. Below is a summary of the key arguments made by the objectors of which there are nine and the paragraphs of the Code which I consider to be relevant:

- a) The banding arrangements reflect the ability levels of those who apply, which may not necessarily reflect the ability range locally. It is feared that the banding assessment will deter applicants at the lower ability level from applying, therefore the intake will be skewed towards the upper ability range (Paragraph 14 of the Code).
- b) All other schools within Barnsley are said to have a 'more open enrolment policy'. The fact of one secondary school operating banding arrangements will have an adverse impact upon other local secondary schools as a result of attracting higher attaining applicants who would otherwise have been admitted to those schools (Paragraph 14 of the Code).
- c) It is feared that children from local primary schools may not "fill the available places" in the highest ability band, and that places within this ability band will be allocated to children who do not live in the local area. Given that the school was established because there was a demonstrable shortage of secondary school places in the local area, this outcome would be contrary to the entire rationale for the school's establishment and contrary to its stated objective of being a school for local children.
- d) The arrangements and supplementary advice are said to be difficult to understand. It is alleged that they are not clear and do not provide sufficient information to ensure that parents will be able to make a reasonable judgment upon whether an application for a place at the school is likely to be successful or not. (Paragraphs 1.26, 1.27 and 14 of the Code).
- e) The adoption of banding arrangements is said to be contrary to what was put forward as the intended admission arrangements for the school before it opened. What was stated was that the school would have an inclusive policy based on DfE models which are supported by the local authority. The banding arrangements which have been adopted are said not be in the best interests of local children and families. It is claimed they do not 'match the ethos of education in Barnsley'.
- f) It is said that the requirements of the Code in relation to consultation were not complied with. In particular, Northern Education Trust and Delta Academies Trust claim that they were not directly consulted, and that they should each have been consulted (Paragraphs 1.45 – 1.48 of the Code).
- g) A number of local families are 'dysfunctional' and live in 'socially deprived areas'. These families find completion of the Common Application Form difficult, and

therefore tend to submit applications after the deadline or not at all. A significant number of late applications are received each year, indicating a lack of understanding of the admissions process generally. The introduction of banding will cause further disadvantage to these applicants. Applicants who do not undertake the banding assessment or who apply late are at a significant disadvantage. If the school becomes oversubscribed, they are unlikely to be offered places (Paragraph 14 of the Code).

- h) Parents may misunderstand the purpose of banding because the arrangements are so complex and difficult to understand. They may perceive it as selection by ability. This will deter parents from applying if they consider their child is not of high academic ability (Paragraphs 14 and 1.27 of the Code).
- i) No adjustments are made in the banding assessment for children with learning difficulties (Paragraphs 1.31 and 1.32 of the Code).

Other Matters

9. Having considered the arrangements as a whole it appeared that there was one other matter which also does not conform with requirements. This is oversubscription criterion 1 which needs to be updated to reflect the fact that the definition of previously looked after children includes those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted (paragraph 1.7 of the Code). The trust has acknowledged that this is an oversight and has said it will be corrected. I am grateful to the trust for its cooperation in this matter.

Background

10. The school is a new academy which opened as a free school in September 2021. It has a Published Admission Number (PAN) of 180. It is a coeducational Church of England secondary school for pupils aged 11 to 16 in Barnsley. The school is part of the Trinity Multi Academy Trust (MAT) which comprises 10 schools (Trinity Academy Halifax, Trinity Sixth Form Academy, Trinity Academy Akroydon, Trinity Academy Grammar, Trinity Academy Cathedral, Trinity Academy St. Chad's, Trinity Academy St Peter's, Trinity Academy Bradford, Trinity Academy Leeds, and Trinity Academy St. Edward's). Two of the secondary schools in the MAT have banding as part of their admission arrangements, and the trust consulted upon introducing banding for September 2023 admissions in relation to four other secondary schools. The Office of the Schools Adjudicator (OSA) received objections to this change to the arrangements of all four schools, namely Trinity Academy Cathedral, Trinity Academy Bradford, Trinity Academy Leeds and this school. An agreement has been reached between Trinity Academy Leeds and Leeds City Council that banding will not be adopted in respect of the 2023 admission arrangements for Trinity Academy Leeds.

The school's admission arrangements

11. These are said by the objectors to be complex and difficult for parents to understand. I have set out relevant extracts below.

“The 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 TASE 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 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/carers of children who sit the fair banding assessment 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 (EHC), 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 (EHC) that names TASE as the appropriate school, will be admitted before any other children.

Oversubscription criteria

When the school is oversubscribed, after the admission of students with an Education, Health and Care plan naming the school, priority for admission will be given to those children who meet the criteria set out below, in priority order:

1. Looked after children and children who were previously looked after but immediately after being looked after became subject to adoption, a child arrangements order, or special guardianship order.

(A looked after child is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989).

2. Siblings - Priority will next be given to the siblings of students attending the school at the time of admission.

3. Other Children

Should any band not fill with pupils assessed and designated to that ability banding, then pupils 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.

Late applications

The Authority will accept applications up to the later date of 30 November 2022 as being on-time and these will be included in the determination of potential offers.

All applications received by the LA after the 30th November deadline will be considered to be late applications. Late applications will be considered after those received on time. If, following consideration of all applicants the school is oversubscribed, parents may request that their child is placed on the school's waiting list."

12. There is supplementary guidance and a video on the school's website, both of which provide a description of how the banding process works and how places are allocated.

Consideration of Case

13. The objectors are strongly opposed to the adoption of banding. The concerns are that its adoption will lead to a situation whereby children with lower ability levels and those living in areas of deprivation close to the school will not be admitted, albeit that it is their local school. The concern is that the school will become a resource for children with higher ability levels who live further afield. I am quoting the wording of one objector in order to illustrate the strength of feeling:

"I do not believe, for a moment, that the process for implementing this policy has been dealt with in an open and transparent manner by Trinity Academy, and, worse still, I believe Trinity Academy have published what I consider to be misleading information about it (for example, publishing on its website that the policy has received backing and support from Barnsley Council, when it clearly hadn't and still hasn't).

I appreciate that as a Chair of Governors, my comments probably do not have the same influence as those of others who have responded to you, but if this policy is approved I think it will set a precedent in Barnsley and will be followed by numerous 'revised' admissions policies from other MATs, possibly in a manner which will also be selective. As an adjudicator, do you really want to make a decision which could set off a possible chain reaction in Barnsley, where MATs start to compete against each other for the 'best' and most talented pupils? That is the avenue I fear we may go down if this admissions policy is accepted and approved.

I note from the Trinity St. Edward's website, via the published document "Fair Banding Assessment Supplementary Guidance Trinity St. Edward's (TASE)" that parents have until 19 September 2022 "to register their child to sit a non verbal reasoning assessment (Fair Banding Assessment)", which will take place on "Saturday 8 October 2022"... I think that asking families to give up a Saturday, for their child(ren) to sit a "non verbal" test is very unfair, and it also begs the question how many of them will actually turn up for it (and I also believe this will put disadvantaged families at an even further disadvantage, especially those families who tend not to engage with schools).

I have never felt the need to contact an adjudicator before in my 30 plus years of being involved in education - but on this occasion I feel that I have had to, as I simply cannot support an admissions policy which I firmly believe is a selective one and does not benefit, first and foremost, the children and young people of Barnsley".

I will address these points later in this determination.

14. The local authority is one of the objectors and has expressed concerns about additional burdens being placed upon the authority and upon local primary schools in connection with the administration of the banding arrangements. I have explained to the local authority that these are not matters that I can comment upon or change. My jurisdiction relates to determining whether the school's arrangements are lawful. However, I note that the trust has offered to reimburse the local authority for any additional reasonable costs that the implementation of banding will cause and has also offered to support the local authority staff team in the implementation of the arrangements (as it says it has done in other local authorities).

15. I also note that the trust is hoping to arrange for the majority of applicants to sit the banding assessment in their own primary schools, and some 20 schools have agreed to facilitate this. The trust did not wish the objectors to be made aware of the names of these schools. The trust informed the OSA that it would be willing to share the names of these primary schools with the adjudicator if requested to do so. The caveat was that the trust does not want the local authority or secondary schools in the area to harass those primary colleagues who have committed to make the banding arrangements work because they see their participation as being in the best interests of their pupils. The objectors state that no primary schools are in favour of the school's arrangements. One objector has said "A number of primaries have also been asked, on numerous occasions, to assist in the administration of these tests in their setting, often by way of guilty threats that children will perform better in their own schools and familiar surroundings".

16. I have not involved myself in this dispute between the parties. All I will say is that, if any primary schools are willing to operate banding arrangements, it will be very much in the interests of local children to sit the assessment in their own Year 6 classrooms. Indeed, this would obviate many of the objectors' concerns about inaccessibility to disadvantaged children and their families.

17. The starting point is that it is for admission authorities to determine the admission arrangements for their schools. Provided the arrangements have been consulted upon, properly determined and comply with the relevant legal requirements, they cannot be set aside because they are unpopular with some people locally. 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.

18. Although banding is lawful, the objectors have expressed reasons why the particular form of banding arrangements adopted by the school is unclear. They allege that banding will operate unfairly in the context of the particular socio-economic dynamics which operate in the school's location and will disadvantage local children from socially deprived groups. 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”.

19. The objectors have cited 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...". My view is that paragraph 14 is the relevant paragraph because banding is not an oversubscription criterion; however, the requirements of both paragraphs are the same, namely that banding must operate fairly and there must be a clear description of what it is and how it will be administered to enable parents reading the admission arrangements to understand how places are allocated.

20. The concerns expressed by the objectors are serious and significant. There is disagreement between the objectors and the trust about how many local schools and stakeholders share the objectors' concerns. The trust alleges that the local authority is encouraging local stakeholders to object. This is not a matter which is relevant to my consideration. A concern expressed by one person is no less (or more) valid than a concern expressed by 100 people. What I have focussed upon is the nature of the concerns and above all whether or not the arrangements conform with the requirements of the relevant legislation and the Code, which is what I am appointed to do.

21. Since the banding arrangements are not yet fully in operation, there can be no actual evidence of what the outcome of their adoption will be. In the absence of any evidence of effect, I have endeavoured to assess how likely it would be that the objectors' concerns will materialise. 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 introduced for the school. These schools are Trinity Academy Halifax and Trinity Academy Grammar. 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 St Edwards is their local school and parents who will be expecting that their children will be admitted to the school.

22. The trust states that, like Trinity Academy St Edwards, both of these other schools serve socio-economically deprived areas. The introduction of banding arrangements has not produced any unintended consequences and has not deterred parents of lower level ability children from applying. The trust says that it is important to ensure inclusivity by working with local primary schools to administer the banding test in a light touch manner. Children should be able to take the test in their Year 6 classrooms with their teachers and staff from Trinity St Edwards present to answer questions.

23. The trust says that the main benefit of the method of banding adopted is that it has delivered exactly what it intended to do, namely **"ensuring that the cohort of pupils admitted to the academy directly matches the ability range of those applying – whilst not disadvantaging the local community"**. The trust says there is "copious evidence" to support the fact of banding not disadvantaging the local community, and the policy has enabled the schools to adopt what the trust considers to be the fairest method of admissions. Indeed, the trust argues that, as Trinity Academy Halifax has become increasingly popular, the use of banding has increased the chances of applicants from socially-deprived areas continuing to be admitted. The school's PAN was increased, and large expensive houses were built in close proximity to the school. Whilst the school still

uses proximity as an oversubscription criterion, being true to its mission to serve the local community, admissions are not determined exclusively by who can afford larger houses close to the school but also by the ability range of those applying.

24. According to the trust, the introduction of banding in the two schools at which it is currently being used has not operated to exclude local children. Neither has it affected the characteristics of the cohorts. The percentage of children who are Looked After or Previously Looked After has increased to 3.6 per cent (from 2.0 per cent) and to 1.5 per cent (from 0.8 per cent) at Trinity Academy Halifax and Trinity Academy Grammar respectively. “The same pattern can be seen with SEN – EHC pupils, whilst Pupil Premium cohorts have increased to 43.4 per cent (from 40.5 per cent) at Trinity Academy Halifax and 54.4 per cent (from 52.4 per cent) at Trinity Academy Grammar. Reading ages [on admission] have gone slightly down at Trinity Academy Halifax (by 7 months) and slightly up at Trinity Academy Grammar”. First choice preferences are said to have remained relatively stable. The trust emphasises that it has monitored the effects of banding in both schools for two – three years precisely to ensure that it did not introduce any negative or unforeseen consequences. The effects of its operation in both schools are said to prove conclusively that this has not been the case.

25. I asked the trust to provide me with the percentages of pupils in each band admitted to Trinity Academy Halifax (TAH) and Trinity Academy Grammar (TAG) for the last two years. The information is set out in tabular form below.

Table 1: September 2021 admissions

| TAG | Applications | % | PAN | TAH | Applications | % | PAN |
|--------------|---------------------|------------|------------|--------------|---------------------|------------|------------|
| Band 4 | 55 | 33 | 59 | Band 4 | 176 | 35 | 116 |
| Band 3 | 44 | 27 | 49 | Band 3 | 134 | 27 | 89 |
| Band 2 | 29 | 18 | 32 | Band 2 | 101 | 20 | 66 |
| Band 1 | 36 | 22 | 40 | Band 1 | 90 | 18 | 59 |
| Total | 164 | 100 | 180 | Total | 501 | 100 | 330 |

Table 2: September 2022 admissions

| TAG | Applications | % | PAN | TAH | Applications | % | PAN |
|--------------|---------------------|------------|------------|--------------|---------------------|------------|------------|
| Band 4 | 40 | 24 | 43 | Band 4 | 132 | 27 | 89 |
| Band 3 | 46 | 28 | 50 | Band 3 | 126 | 26 | 86 |
| Band 2 | 37 | 22 | 40 | Band 2 | 126 | 26 | 86 |
| Band 1 | 43 | 26 | 47 | Band 1 | 103 | 21 | 69 |
| Total | 166 | 100 | 180 | Total | 487 | 100 | 330 |

26. Band 4 is the band to which the higher attaining pupils are allocated. In 2021 this was the most populated band for each of the schools. The picture is different in 2022. The data shows a more even spread across the four bands in both schools. It is difficult to draw any meaningful conclusions based upon two years data with no consistent pattern; however the evidence above does suggest that the percentage of disadvantaged children has increased for both schools in the two year period since banding was adopted. The trust says that crucially the schools are populated by local children who sat the banding assessment in their local primary schools, and not by children living further afield in more affluent areas. The trust also states that the average home/school distance for both schools has either stayed the same (in the case of TAG) or actually decreased (as in the case of TAH) since banding was introduced. Based upon this very limited evidence, it does not appear that the concerns expressed by the objectors have materialised in the case of these other schools.

27. There is reference by the objectors to the fact that the adjudicator had previously found that the operation of banding at TAH did not comply with the requirements of the Code, and indeed it is correct that, in ADA2965, 2970 and 3036 the adjudicator found that the banding arrangements for TAH were unfair in September 2015. At that time, TAH was admitting equal numbers of children from four bands based upon the national ability range. The adjudicator concluded that this was not in line with the ability range of the school's intake, which was below national ability, and that the arrangements were both unfair and unclear. The adjudicator's findings in 2015 may be one of the reasons why the trust has adopted the alternative banding model it now operates for its schools (although this has not been said). I note that the trust has taken additional steps which were not in place in 2015 (including the online video) to explain the process clearly to parents and children engaged in the application process. These are in place for all of the trust secondary schools which operate banding.

28. I asked the trust specifically why it had adopted the particular form of banding which it chooses to operate, as opposed to any of the other permitted forms of banding in section 100 of the Act, and whether in light of the objectors concerns, it would consider banding based upon the ability of children in the local area (as opposed to the ability of children

taking the banding assessment). Using this alternative form of banding might alleviate some of the objectors' concerns, although I am not sure how the trust would be able to know with any certainty what the local level of ability is without testing all children in Barnsley primary schools at the beginning of Year 6.

29. The trust informed me that the cohort which entered Trinity Academy St Edwards in September 2021 was academically broadly in line with national average (using CATS¹ outcomes, in the absence of KS2² data). This surprised the trust as it had expected the cohort to mirror the profile of other trust secondary schools and thus be below the national average. Because the profile of the areas in which the trust secondary schools are located is below the national average, the trust has discounted using a form of banding based upon the national average as this would disadvantage local applicants.

30. The trust has also told me that Trinity Academy St Edwards, as a new Church of England secondary school, had attracted applicants from further afield prior to the adoption of banding. In terms of those who have been admitted in its first two years of operation, it is not as 'local' as some objectors have claimed. For the September 2021 intake the average home/school distance was 1.43 miles, the furthest was 8.48 miles. For the 2022 intake those figures are 1.87 miles and 7.26 miles. Given that the intake is currently of national average ability with a "diverse geographical pull", the trust's view was that the fairest and more obvious course of action is to use banding based upon the full range of ability of applicants for the school. Also, the trust says 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 local primary settings".

31. In light of the fact that the objectors are so concerned about the potential effects of the adoption of banding, I asked the following further question: "Generally, the purpose of an admission authority changing its admission arrangements is that it wants to change the school's intake. The trust has gone to the expense of administering banding at Trinity Academy Halifax and Trinity Academy Grammar, and yet the intake for these schools appears not to have changed following the adoption of banding. Why is the trust choosing to adopt a complex and expensive system of admissions for Trinity Academy St Edwards in light of extensive opposition from local stakeholders when it appears that the predicted outcome is that there will be no change? If it is expected that there will be a change, which applicants does the trust anticipated will be 'displaced' and which applicants will 'replace' them?"

32. The trust has said in reply that it has always maintained that the new admissions policy (and the introduction of fair banding within it) was not about changing the cohort.

"It is, quite simply for us, about ensuring that the fairest method of admissions into our schools is implemented. We believe in fair banding; having administered it in two

¹ Cognitive Ability Tests.

² Key Stage 2 Standard Assessment Tests.

of our schools for a few years we can say that it has been understood, engaged with and now embedded locally (although there was initial opposition in Calderdale too, as the OSA is aware). The cohort characteristics have not changed e.g. the same high proportion of pupils still come from the catchment area, but now all of those pupils – including the ones from some of the most deprived areas that might not be right next to the school (I gave an example of children from Mixenden trying to get into TAH in a previous reply) have a fairer chance of entry.

We consider it to be relatively easily understood and navigated (in disadvantaged areas, with hard to engage communities), and, whilst recognising local opposition, feel that we have a duty to do the right thing for all local young people. We also believe, given our experience, that local stakeholders will be ‘won over’ when they see that it works for the local communities we all serve.

It is not expected that there will be ‘a change’ – just that it is a fairer means of admission to the school(s) and will ensure that the cohort of pupils admitted exactly reflects the ability level of those applying to the school (without disadvantaging any groups within the local community)”.

33. I have set out below the data supplied for the 2022-23 Year Groups as TAG and TAH. They show very little change in the FSM Ever 6 intake for both schools before and after the introduction of banding.

Table 3: TAG FSM Ever 6 Data 2022/23:

| 2022-23 Year Group | Fair Banding Intake/Non Fair Banding Intake | FSM Ever 6 % | Combined FSM Ever 6 % |
|--------------------|---|--------------|-----------------------|
| 7 | FB | 51% | 54% |
| 8 | FB | 55% | |
| 9 | FB | 55% | |
| 10 | NON FB | 50% | 52% |
| 11 | NON FB | 55% | |

34. **Table 4: TAH Ever 6 Data 2022/23:**

| 2022-23 Year Group | Fair Banding Intake/Non Fair Banding Intake | FSM Ever 6 % | Combined FSM Ever 6 % |
|--------------------|---|--------------|-----------------------|
| 7 | FB | 40% | 40% |

| 2022-23 Year Group | Fair Banding Intake/Non Fair Banding Intake | FSM Ever 6 % | Combined FSM Ever 6 % |
|--------------------|---|--------------|-----------------------|
| 8 | FB | 41% | |
| 9 | NON FB | 42% | 40% |
| 10 | NON FB | 38% | |
| 11 | NON FB | 42% | |

35. I asked the LA for information about the school and the other local secondary schools in order to consider this objection in context. In response to my request for information, the LA has told me that there were 26 late applications for admission to the school in 2021 and 14 in 2022. These figures were lower than I had been expecting based upon the level of the objectors' concern about late applicants. I note that there are 11 secondary schools in Barnsley. In order to make some sort of assessment of the scale of the distances between the schools, I measured the distance on Google Maps between Trinity Academy St Edwards and Penistone Grammar School³, which looks to be the furthest away. This was approximately eight miles.

Horizon Community College is one mile away to the west, and has a 23.5 per cent intake of children eligible for FSM; Barnsley Academy, which is 1.74 miles to the south east has a higher intake of FSM children at 40 per cent; Holy Trinity, which is 1.81 miles to the north east has a 25.6 per cent FSM intake; and Outwood Academy, which 2.63 miles further to the north east from Holy Trinity has a 31 per cent FSM intake.

Table 5: Preferences expressed for Trinity Academy St Edwards and places allocated

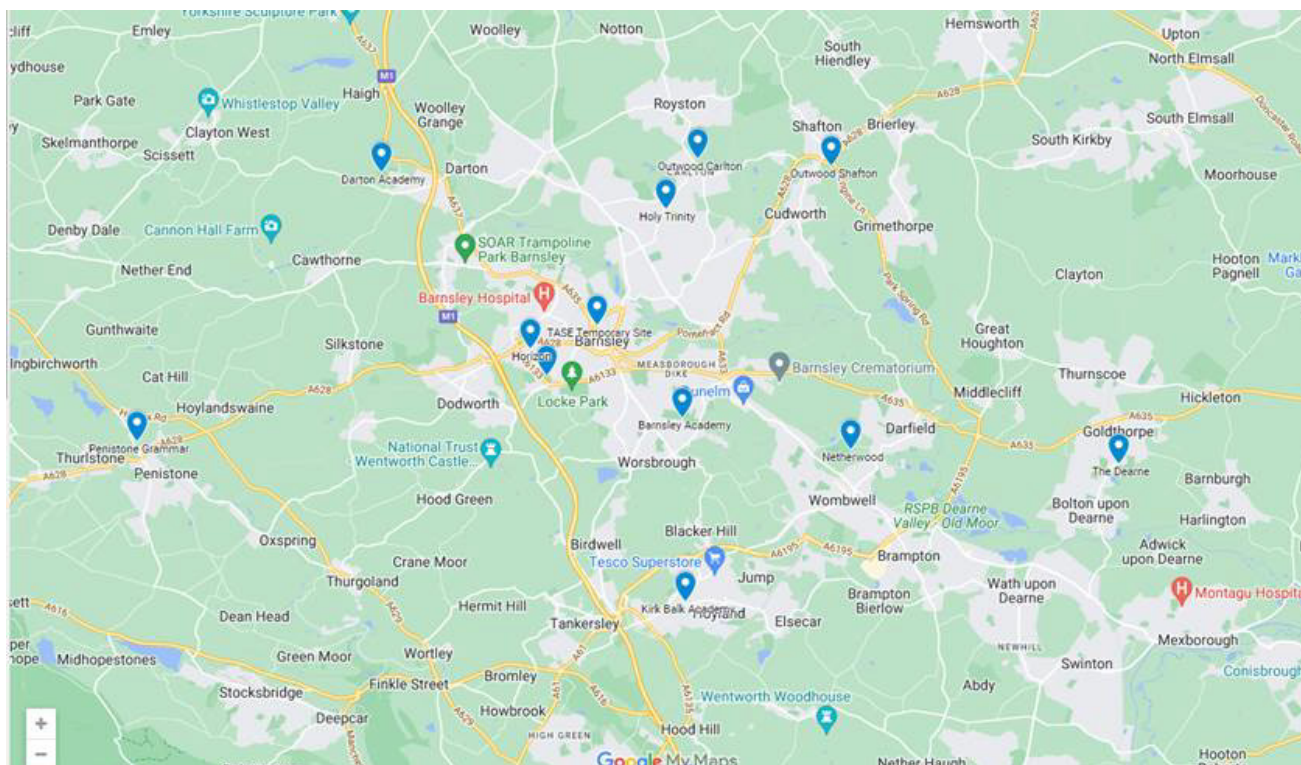
| | 2021 | 2022 |
|--------------------|------|------|
| First preferences | 166 | 124 |
| Second preferences | 132 | 101 |
| Third preferences | 49 | 48 |
| Places offered | 180 | 180 |

³ Although the school is named Penistone Grammar School, it is not a selective school.

Table 6: A list of Barnsley secondary schools

| |
|--|
| Barnsley Academy |
| Darton Academy |
| Holy Trinity Catholic and Church of England School |
| Horizon Community College |
| Kirk Balk Academy |
| Netherwood Academy |
| Outwood Academy Carlton |
| Outwood Academy Shafton |
| Penistone Grammar School |
| The Dearne Academy |
| Trinity St Edwards |

Map of Barnsley Secondary Schools



36. The diocese has informed me that there is no reference to Fair Banding in the Diocesan guidance. The diocese acknowledges that banding is an allowable approach to admissions. It says that it makes no judgment about banding and acknowledges that it may be “a contextually specific approach to admissions adopted by LAs, schools and academies”. The geography of the Leeds Diocese spreads across nine local authorities and the diocese has church schools in all nine areas. The diocese is aware that banding is utilised by maintained and academy schools in some of those local authority areas and says it would therefore be difficult for the diocese to make a blanket statement about banding. The diocesan guidance includes sample admissions policies. None of these references banding.

37. The diocese supported the free school application for Trinity St Edward’s. It did so through dedicated resource in the form of a highly experienced consultant (provided and paid for by the diocese). This consultant worked at the request of the diocese with the main authors of the application. The subject of admissions was debated; however, there was no discussion about banding either through the consultant or directly between the diocese and the trust. The diocese has told me what its guidance says about the requirements for oversubscription criteria. This reflects the requirements in the Code. I have understood the diocese’ response to mean that it does not consider the adoption of banding to be at odds with its guidance, and that it has no specific comment to make upon the trust’s decision to adopt banding arrangements for this school.

Concern a) The level of ability at the school is likely to be skewed towards the upper ability range

38. The objectors say that the policy indicates that marks are divided into four bands and that the school will be instructed how many children to take from each band. This is said to ensure that the 180 places offered reflect the ability range of applicants. The objectors' concern is that, because the banding arrangements adopted by the school are intended to reflect the ability range of those who apply, this will "hugely skew the applicants to the top end of the ability range". Hence, they will fairly distribute an already skewed population of children, which does not mean that the intake will cover the full ability range of local children. Although the trust claims that banding is an inclusive process, participation in the assessment process places additional pressures upon children and parents. If the trust wishes to be inclusive, the objectors ask what is the need for banding? In a nutshell, the fear is that applicants with children who have lower ability levels will not apply or will be non-banded. If this is the case, the intake of the school will not reflect the ability level of children for whom this is their local school.

39. It is said by the objectors that children's attainment is consistently monitored throughout Key Stages 1 and 2, so why is there a need to place them under the additional stress of another selection test? Low ability children and their parents will struggle to engage in, and to follow, the application process. The objectors question the data which has been provided by the trust in relation to the operation of banding in its other schools, suggesting that this is invalid because it was collected during the pandemic.

40. The trust's response is that an applicant's performance in the banding assessment has no bearing on their chance of gaining access to the school because this is determined by the oversubscription criteria which are used to prioritise applicants within each band. These are Looked After and Formerly Looked After Children, siblings and home to school proximity. The trust says: "This is an inclusive policy and does not deter lower ability level applicants from applying, particularly where applicants sit the test in their own classrooms and a light-touch approach is adopted".

41. The trust claims that it has offered factual information and evidence with regard to the implementation of banding in other socio-economically deprived schools (see above). Applications to those schools have remained high, therefore there is no evidence that parents have been deterred from applying due to the banding assessment. The cohorts admitted are said to have remained reflective of the local area, and the policy has been shown to work well over a two to three year period. Whilst there was a temporary national closure of schools during some periods of the pandemic, the trust points out that education overall (including admissions processes) continued to operate, and the trust says it has managed to work effectively with local partners in the areas of these other schools to ensure that all banding-related information was conveyed so that the arrangements continued to be managed smoothly.

42. The objectors have expressed concerns which, if they manifest, will cause an unfairness to local disadvantaged children. The difficulty is that there can be no actual

evidence to support their claims, and I cannot simply assume they will manifest. I have taken particular account that the concerns are shared by stakeholders who know the area well and are educational professionals. From what is currently known, Trinity MAT operates banding arrangements in two secondary schools in deprived areas. Whilst the evidence of admissions to each of these other secondary schools does indicate higher numbers of children being admitted from the top level ability band in September 2021, there is a broadly even spread for September 2022. There is no evidence that the level of disadvantaged children has reduced since banding was adopted.

43. Banding is a lawful form of selection. The form of banding adopted by the trust will not operate to exclude local children or children of lower ability if the school is oversubscribed as long as these children apply and are allocated to a band. Where there are concerns that this may not happen, there are two possible responses. The first would be to stop the banding process from happening. The second would be to take steps to make the process more accessible to those who might struggle to engage. If the banding test for Trinity St Edwards is administered in local primary schools, my view is that there will be a greater chance that local children from disadvantaged backgrounds will take the test and be allocated to a band. The more children who sit the test who are of lower ability, the greater the prospects become of the school admitting more applicants from the lower bands. Given that this is so obviously the case, it is difficult for me to understand why parents from disadvantaged social groups and their children are not being actively encouraged and helped to gain places at the school. Trinity MAT is establishing a track record for taking over existing schools which have been struggling and setting up new schools in areas of social deprivation which appear to be improving the educational prospects for children who are most in need.

44. Whilst I accept that banding arrangements may initially appear complex; that some parents are more likely than others not to be inclined to complete an additional form or take their child to be tested on a Saturday; and that parents who are from more favourable socio-economic backgrounds and more engaged in their children's education are more likely to be prepared to take these additional steps, what I cannot accept is that the rational response to this would be to prevent the school from operating banding. The trust has explicitly acknowledged, and is familiar with, these hurdles for disadvantaged families; has taken steps to overcome the difficulties for such families in other areas in order to place them on an equal footing in the application process; and has produced evidence that the schools which operate banding have continued to admit local disadvantaged children. Whilst I accept that primary schools are over-stretched, I am aware that many administer these sorts of tests. They happen once a year, and the trust sends an administrator to facilitate the process. I cannot see that this is an unreasonable burden for primary schools to undertake in order to assist the children and families which they so clearly care about, and are concerned for.

45. There is no evidence upon which I can uphold this aspect of the objection. If the concerns raised by the objectors become a reality, and I sincerely hope they will not, it is open to them to make a further objection in two years based upon evidence of any actual effects proving tangible disadvantage.

Concern b) Adverse impact upon other local secondary schools

46. The objectors say that all schools within Barnsley have a “more open enrolment admissions policy” which is reflective of the communities in each area but also consistent across the Borough. The local authority says: “A change to banding arrangements in one school would mean that the school was the only school operating a different admissions policy which may have a negative impact on other schools within the Borough, as the policy allows for banding of the differing needs of pupils and may attract higher attaining pupils from other school areas, thereby impacting on their intake... Barnsley argues that our approach to admissions is fair equitably and less process driven, making the application process as transparent and equitable as it can for the community in which it serves... the introduction of a further policy just adds further confusion, especially to the parents who already struggle with the application process”.

47. HCAT Multi Academy Trust has expressed its “real concerns in relation to the implementation of a Fair Banding Scheme. Barnsley Council and the schools within Barnsley have worked together to ensure a consistent approach to the Admissions code is adhered to across all schools within the borough, allowing all children in Barnsley to have a fair and equitable opportunity with the Education they receive”.

48. The trust says in response that not all schools in Barnsley have a more open enrolment policy, and that the school's arrangements give priority to applicants living closest to the school. The trust emphasises that admission to the school is determined by the oversubscription criteria. The operation of banding in the two other trust secondary schools where it is in use is said not to have attracted higher ability applicants who would not otherwise have been admitted.

49. As I understand the position, what appears to be argued here by the objectors is that other local secondary schools may become less popular, particularly with parents of higher ability children because these parents will choose to apply for Trinity St. Edwards instead of applying to the school they would otherwise have applied for. Higher ability children will be offered places at the school because, as more applications are made on behalf of children from this group, more of those children will be admitted.

50. It is a fact that some schools are more popular than others. Popularity tends to be based upon reputation and results. The Code expressly permits admission authorities to adopt a wide range of oversubscription criteria and to choose to operate banding arrangements such as those which have been adopted by the school. For many years, schools in this country have been funded largely on the basis of the numbers of pupils they are able to attract. In that sense, schools compete with one another. It is for the adjudicator to determine whether admission arrangements are lawful, but it is not the role of the adjudicator to find that a set of arrangements cannot be used because other schools fear it will make them less popular.

51. Whilst banding is a form of selection, it is not a form of selection by high ability. As long as local children apply, the ability range admitted will reflect the ability range of local children, and those living closest to the school will have priority. The objectors' argument

appears to be that all of the other secondary schools are inclusive, but the arrangements for this school are not. The school's arrangements are said to be unfair to other schools because other secondary schools have chosen not to operate banding. I cannot uphold this aspect of the objection.

Concern c) High level ability places are likely to be offered to applicants who do not live in the local area

52. The objectors say that original rationale for the establishment of this free school was to serve the local children within the central school planning area of Barnsley where there was a demonstrable shortage of places. The objectors fear that, within the banding process, children from local primary schools might not fill the places in the highest band. These places will go to children further away from the school and hence disadvantage local children. The objectors say that, if a greater proportion of out of area applications are admitted to the school this would be to the detriment of children living in the “catchment area⁴”, and contrary to the rationale for establishing the school. It is strongly felt by the objectors that it would be unfair for local children to have a reduced chance of a place at the school, because children from further away were given places. This is said to be contrary to the School Admission Code. Whilst this is not the case, there is a requirement in the school's funding agreement that it provides places for local children.

53. In response, the trust points out that no bands will ever not ‘be full’ as there is no set allocated number of pupils to be drawn from them. If ten per cent of applicants are allocated to Band 4 (the highest attaining), then only 10 per cent of the cohort (18 pupils) from that band can be allocated a place. In the event of oversubscription, priority is given to siblings and those nearest to the academy. This ensures that the academy serves the local community it was established to serve.

54. Taking an extreme example, if the objectors' worst fears are realised, hundreds of out of area parents will start applying to the school, all of whom have children in Band 4. Say, for example, 80 per cent of applications were from out of area parents with Band 4 children, this would mean that 80 per cent of places at the school would be allocated under Band 4. Local Band 4 children would have priority under the oversubscription criteria, but in order to fill 80 per cent of places, the net would likely be cast fairly wide. I note that this has not happened in the other two trust schools which operate banding in the form which has been adopted for this school, and I have no other evidence upon which to base a conclusion that it is likely to happen in the case of this school. A small number of children do travel seven or eight miles to the school, but there is no evidence produced by the objectors suggesting that these are all children of high ability. If it were to transpire that the school becomes flooded with applicants of high levels of ability who are not from the local area, there might be an arguable case of unfairness to local children, depending upon what

⁴ The objectors refer to the school's catchment area, although it has not adopted one. I have taken this to mean the area from which children would traditionally have been admitted – although I am not sure this can be established with any certainty given that the school only opened in September 2021.

their other available options might be. If the school is no longer admitting applicants from the local area, the trust would be in breach of the school's funding agreement. But there is no evidence to persuade me that these outcomes are an inevitable, or even a likely, consequence of introducing this type of banding arrangements.

55. I appreciate that the objectors will perceive this decision as me saying that I am not prepared to stop something happening before it causes an unfairness to disadvantaged children. However, it is not open to me to declare the school's banding arrangements to be unlawful based on a *possibility* that they might operate unfairly. I need some evidence of actual unfairness, or at the very least some evidence upon which to base a conclusion that unfairness is more likely to arise than not. I do not have sufficient evidence to uphold this aspect of the objection.

Concern d) The arrangements are insufficiently clear

56. Current policies across the Borough are said to be "fair and non-discriminatory for all pupils and allow parents to make a reasonable judgement about their options". The objectors suggest that banding arrangements may cause concern for some parents regarding the requirement to sit an ability assessment for a local school. "It is felt that the policy and supplementary advice are not easily understood and [are] not clear or sufficient to ensure that parents will be able to make a reasonable judgement as required under Paragraph 14 of the School Admissions Code". The objectors suggest that I pick a set of parents and test out how clearly they understand the arrangements. This I am not able to do.

57. The objectors say that, as part of the consultation regarding a change of policy there did not appear to be detail around the tests other than to state that "Pupils applying to TASE 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". Paragraphs 1.26 and 1.27 of the Code (cited above) are also relevant. These require that the entry requirements for banding must be fair, clear, and objective and that admission authorities must publish the admission requirements and the process for banding and decisions, including details of any tests that will be used to band children according to ability.

58. The trust is emphatic that the explanation of the banding assessment process is clear and unambiguous, as is the explanation of the fact that an applicant's performance in the assessment has no bearing on their chances of being offered a place. The trust says that it has had considerable success in making the process a simple one to follow. All that needs to be done is register for the assessment or, if you are in a local primary school, the school will do that. The trust then "does the rest. The consistent message then is about performance in the FBA not being a factor in gaining entry into the academy, which again we do effectively".

59. The trust "strongly believes" that the arrangements and supplementary guidance are clearly understood by parents. It says that significant bespoke support is offered, including translations, videos and individual explanations wherever required. The trust says it has

“extensive experience” of delivering banding in disadvantaged areas with diverse ethnic and cultural backgrounds, including historically difficult to reach communities.

60. Whilst the arrangements are undoubtedly more complex than others such as those that offer places solely on distance between home and school, the explanation of how they operate as set out in the arrangements and expanded in the Supplemental Guidance is as clear as it could be. The video on the school’s website is helpful and clear, particularly so for parents who may have difficulties with reading or be less inclined to read written guidance. A sample assessment paper is published on the school’s website alongside the admission arrangements, guidance and video. Additionally, children who sit the assessment in their own classroom are given a face-to-face explanation of the fact that the purpose of the banding assessment is not allocate places to children who achieve the highest scores.

61. 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) that determine place allocation. It will 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 oversubscription 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.

62. As I have said, the arrangements are as clear as they can be, and the trust is prepared to go to considerable lengths to explain the process when needed. I do not uphold this aspect of the objection.

Concern e) The introduction of banding was not what was promised and is not in the interests of local children and families

63. The objectors say that, when the trust was undertaking the “statutory Section 10 Consultation” prior to the opening of the school it stated that the school would have an inclusive policy based on DfE models also supported by Barnsley Council. It mentioned welcoming pupils of all abilities and backgrounds, reflecting the trust’s inclusiveness and desire to serve the local community; admissions policies which were consistently reflected across the Borough. All of these assertions were extremely important to schools in the local authority. The objectors say: “This proposal presents a significant change to that initial consultation and the potential introduction of policies which would not be in the best interests of anyone, including pupils and families, and does not match the ethos of education in Barnsley... when Trinity MAT made an initial application to run for the free school in Barnsley at no point was this [banding] mooted within their application or shared at the interview stage when competing against other trusts”.

64. The objectors also say, however, that “It is evident that this is a Trust wide initiative in which Trinity MAT are hoping to have reflected throughout all their academies. Barnsley LA feels so strongly that Trinity should have been more open and transparent about this policy when making their application to lead a Free School in Barnsley”. The objectors are sceptical about the trust’s statement that it intended to run banding arrangements at its other schools for a period of time before adopting these arrangements at Trinity St Edwards. The local authority has said that it has approached local authorities in the areas where banding is being operated, and their viewpoint is not as has been described by the trust. I asked the local authority for evidence of these communications, but it was unable to provide any.

65. In response, the trust says that the decision to consult upon the introduction of banding was made once the trust and governing board had considered the impact of its operation at the other two trust secondary schools. The trust bid to open Trinity Academy St Edwards in 2018; the outcome of the newly introduced Fair Banding trial (for two years) would only be have been known by September 2021 (some three years later), and the adoption of banding is for 2023 admissions, which is some five years after the bid to open the school was made.

66. Whilst I understand that the objectors genuinely consider they have been duped by the trust into supporting the trust’s bid (which they say they would not have done if they had known that the trust intended to adopt banding), there is nothing I could do about that, even if I believed it to be true. The trust, as admission authority for the school is entitled to determine and change the admission arrangements for its schools provided the correct process is followed. I do not uphold this aspect of the objection.

Concern f) Consultation requirements not complied with

67. There is said to be “no clarification on how the consultation complied with paragraphs 1.44 to 1.48 and specifically paragraph 1.47”. These paragraphs provide as follows:

“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. Where the admission arrangements have not changed from the previous year there is no requirement to consult, subject to the requirement that admission authorities must consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period.

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."

68. Milefield Primary does not feel that the full consultation process complied with the literal requirements of the Code; whilst consultation documents were received by some schools within the Borough other schools did not receive invitations to any consultation meetings. This school feels that more could have been done to meet with and explain the potential impact of the changes to the local community. Other objectors, which are local academy trusts, complain that they were not consulted directly (although some do appear to have submitted responses to the consultation). The timing of the consultation is also felt to be have been problematic because a single consultation event was arranged for Thursday 20th January 2022 in the midst of the pandemic.

69. The objectors say:

"It is felt by stakeholders that the CEOs of all the Academy Trusts serving in Barnsley should have been consulted with directly, out of courtesy, as Delta and NET Trusts have already conveyed. It is important to note that no Governors of Barnsley schools were consulted with directly from the Trust, and no attempt was made to consult with the LA to share this information. The LA did, however, take the decision to share this detail so colleagues could express their own thoughts and opinions in relation to the policy. It is the view of Barnsley MBC that local councillors should also have also been written to, individually, by the Trust.

It is important to note that the consultation process took place at the height of the pandemic, when staff workloads within all education settings were evidently high and

the whole education system was going through an extremely turbulent time. The attendance and year groups closed outlined the staffing challenges headteachers were facing.

It is important to note that Barnsley had the highest death rate of covid cases in the whole of the country, which will have impacted massively on school staff and the communities in which they serve. Stakeholders feel it is important to share this level of detail, as it provides detail surrounding the demographic challenges Barnsley faced and further reinforces the challenges schools, and especially headteachers, were facing. Headteachers at the time of the consultation were under immense pressure and just keeping their schools open to ensure the continuity of education for all Barnsley children and young people. It is felt, therefore, that the timing of their consultation was ill judged by Trinity MAT, or on the other hand stakeholders perceived that this was perhaps was the intention to be able to drive this through in the hope that the high workloads, staff pressures and the many other extenuating circumstances caused by the pandemic would mean that stakeholders within Barnsley and the LA would not raise any questions, concerns and pose any objections”.

70. The trust’s response is that the required consultation process is determined by the Code and that the trust followed the requirements of the Code. The following persons/bodies were consulted by email:

- All pupils (letter emailed to parents/carers of pupils at the school);
- All Barnsley primary schools
- All Barnsley secondary schools
- All school staff
- All school governors
- The local authority
- The diocesan board of education.

71. The trust’s view is that, since each of the schools in the local authority area was consulted, 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”.

72. 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 School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the 2012 Regulations) and the Code. Nor can the adjudicator require the admission authority to re-instate the previous year's arrangements.

73. Whilst technically the objectors are 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 Academy Trusts who were not consulted directly, all I can do is to state this as a fact. I note also what is said by Milefield Academy about some schools not receiving invitations to any consultations, which concerns me. I am concerned that not enough was done to ensure compliance with the requirement to consult the parents of children between the ages of two and eighteen, some of whom may be affected directly. I uphold this aspect of the objection. I make no comment about the allegations that the consultation was deliberately timed to take place during a period in which schools were preoccupied with the pandemic (which the trust refutes) except to say that the trust was obliged to consult upon the proposed revisions to the admission arrangements and there is a limited window in which to do so.

Concern g) Disadvantage to local families who are 'dysfunctional' and those who live in 'socially deprived areas' and late applicants

74. It is the view of the objectors that the banding arrangements will disadvantage groups of families within the Borough particularly those who are dysfunctional and/or who live in socially deprived areas, who find the completion of the common application form difficult and who therefore do not submit it on time or at all. The local authority says that a significant number of late secondary school applications are received by the authority each year (228 for the 2021/2022 admissions round) possibly indicating a lack of understanding of admission arrangements. The authority considers that there is an element of the community who perhaps do not fully engage with education despite intensive work by the admission service to engage with parents and promote the process. The introduction of banding arrangements will further disadvantage these groups.

75. The objectors point out that the arrangements make it clear that "Applicants who sit the Fair Banding assessment are considered for admission first". Therefore (they say), any child who does not sit the assessment is highly unlikely to be admitted to the school. The latest school census (Jan 2022) for Trinity Academy St Edwards indicates the following children are on roll at the school.

76. Table four: Characteristics of children on roll at the school as of January 2022

| Percentage On Pupil Premium | Percentage On FSM | Percentage where Ethnicity other than “white British” | Percentage of English as an Additional Language |
|-----------------------------------|-------------------------|--|--|
| 30% (LA – 33 %) | 26% (LA – 28%) | 15% (LA – 17%) | 11% (LA – 10%) |

77. The local authority believes that the banding is complicated and will be difficult for parents to understand. It says that this will especially be the case for a large proportion of the children in the groups above. The local authority receives a higher number of late applications for these groups and even with the reminders and support from the admissions team as well as education welfare officers, it can be challenging to get parents to understand and engage with the admissions process, therefore overcomplicating the process with the introduction of an additional form can only further confuse parents.

78. I note that the percentages of children eligible for Pupil Premium are lower than those of the intake at the other two Trinity schools where banding is in operation (43 per cent TAH and 54 per cent TAC), and that the percentages of children whose ethnicity is not white British and who have English as an additional language are also relatively low. In other areas, the figures are higher. For example, the DfE regional statistics show that in 2020/21, the average in London was 44 per cent; West Midlands 21 per cent; and Yorkshire and Humberside 16.3 per cent. I do not see an immediately obvious correlation between white British ethnicity and disadvantage. The local authority states that Barnsley is a more deprived area than Calderdale where other trust schools are located. Barnsley is ranked 87/324, whereas Calderdale is ranked 124/324⁵. I have looked at the Index of Deprivation Affecting Children Index (IDACI) for 2019 published by the Ministry of Housing, Communities and Local Government. This ranks Barnsley at 35 and Calderdale at 61 out of the 151 upper tier local authorities, confirming that Barnsley is more deprived than Calderdale.

79. The trust agrees that this is correct; however, it adds that both TAH and TAG serve “significantly deprived areas well in line with Barnsley’s deprivation measures”. The trust also emphasises that it has significant recent experience of administering banding in similar circumstances in the two other schools. Both serve ‘socially deprived’ areas with several ‘dysfunctional’ families and the process has been successfully delivered without any group being disadvantaged. The trust attributes this in part, to the fact that it enjoys strong positive

⁵ This evidence is said to have taken from a poll in 2020. More deprived areas are said to be ranked lower. 324 is said to be the number of local authorities (although there are 333 local authorities in England according to Government Guidance Local Government Structure and Elections 2021).

relationships with local primary schools and they facilitate the banding assessments in their schools. This (says the trust) 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 both their teacher, teaching assistant and a member of the Trinity administrative team present. The nature of the assessment is described, and children are told that their performance in it has no bearing on their prospects of being offered a place, which depends upon the oversubscription criteria. Applicants who do not undertake the banding assessment and/or apply late are given another opportunity to undertake the assessment and the current practice is to offer further opportunities if children move into the area.

80. I have been told by the objectors that every year there are a high number of families who do not apply for a school place, or do not apply by the required deadline. These are said to be families from disadvantaged social groups. The objectors consider that the arrangements 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. Whilst this may be true in respect of local authority schools generally, the numbers do not appear particularly high for this school. I note that in the last two years there were 26 and 14 late applications for places at the school. The local authority says that it can be seen from these figures that “there are 40 children who would not have been afforded the same equality of opportunity to secure a place at this Academy, should this policy have been in existence” [this I understand to mean banding].

81. Under the school’s arrangements for admission in September 2022 late applicants are not offered places until after those who have applied by the required deadline. If these 40 late applicants were allocated places at the school, this can only have been the case because there were sufficient places to accommodate them after all higher priority offers had been made and accepted. The treatment of late applicants is unchanged in the 2023 arrangements in this respect.

82. With the introduction of banding, there are two relevant deadlines. The deadline for registration to sit the banding assessment, which is 19 September, and the national deadline for applications to secondary schools, which is 31 October. If most Barnsley children sit the banding assessment in their primary schools, it is unlikely that the number of non-banded children will be high. Parents whose children are not able to sit the banding test in their own schools will be treated as non-banded if they have not applied for their child to sit the banding assessment by 19 September and taken the assessment. However, all non-banded children whose parents apply before 30 November will be treated as on-time applicants and given an opportunity to sit the assessment. These children will not be disadvantaged as long as they sit the assessment.

83. Applicants who will be disadvantaged are those who apply after 30 November. But these applicants would be disadvantaged regardless of whether the school has banding arrangements or not. All applications submitted after this date are treated as late and given lower priority. I considered whether banding could be said to create a “double disadvantage” with the potential for an applicant to be ‘penalised’ twice. Once for being non-banded and once for being late. It is possible that an application could be made after

30 November for a child who has been allocated to a band. This might, for example, occur where the child has sat the banding assessment in school. That child will be given lower priority than all on-time applicants but higher priority than non-banded late applicants. Parents who apply after 30 November and whose children are non-banded are given the lowest level of priority. Also, late applicants who are not offered a place will be placed on the waiting list for the relevant band in accordance with the oversubscription criteria, whereas non-banded late applicants will feature on a separate lower priority waiting list.

84. My view on this point is that the trust is taking all reasonable steps to ensure that children are allocated to a band. If parents cannot be encouraged to apply for their children to sit the banding assessment, or local primary schools will not offer children the opportunity to sit the assessment in their Year 6 classrooms, there is little more that the trust can do. Ultimately, this has to be a matter for parents. It is possible that, if parents are aware that their child has sat the banding assessment in primary school, this may prompt them to apply for a place at the school before the deadline for on time applications. I can see from the data provided by the local authority that some parents apply late. This is a problem for their children because it disadvantages them. The number of late applications for the school do not appear to be particularly high. Late applicants are given lower priority in other secondary schools. It is no different for this school. I do not uphold this aspect of the objection.

Concern h) Parents may perceive banding to be a form of selection based upon high level of ability

85. The objectors say that the arrangements are complex and parents who are not familiar with the concept of banding arrangements might perceive any form of assessment as a method by which schools will choose higher ability pupils for admission over those who do not perform as well even though this is not the case. It is felt that many parents would struggle to understand how places for the school will be allocated when looking at the arrangements because they are complex, unclear and contravene the Code.

86. Paragraph 14 of the Code is relevant, which provides that admission arrangements must be clear, and that parents must be able to look at a set of arrangements and understand easily how places will be allocated. Also relevant is paragraph 1.27 of the Code which requires that 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.

87. I do not uphold this aspect of the objection. The arrangements make absolutely clear that banding is not a form of selection by high level of ability. The video on the school's website is extremely clear in describing how the banding arrangements work. In order to be unclear on this particular point, a parent would need to have not looked at the arrangements and not watched the video. I accept that this will be true of some parents, but this will be true of parents applying to any school. The admission authority can only do its best to make the arrangements as clear as they can be, as the trust has done. The arrangements are clear about the process, when parents will be notified of their child's

allocated band, a sample banding assessment is published alongside the arrangements on the school's website and is immediately accessible.

Concern i) No adjustments are made to ensure that the banding assessment is accessible to children with learning difficulties, therefore it is not inclusive

88. 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.

89. Paragraph 1.32b) states that 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".

90. The objectors consider that children with learning difficulties should be given additional time to complete the assessment and that the arrangements do not provide for this. There are concerns that children who are vulnerable or who have learning difficulties but no Education Health Care Plan (EHCP) are disadvantaged. This is said to be direct discrimination because "not allowing children to have additional time that perhaps they need may make children feel they have had sufficient time in which to do their best placing unnecessary stress upon the child". The objectors say that primary schools are able to request additional time for SATS, as they know their own children, and which children would be better placed to achieve the best they can if they have additional time granted because of any additional needs or circumstances that may adversely affect their outcomes. It is said that exam conditions can have a detrimental impact on a child's ability to perform.

91. The trust reiterates the point that the outcome of the assessment does not affect an applicant's prospects of being offered a place at the school. This is determined by the oversubscription criteria. The objectors then argue that, if the assessment does not determine whether an offer is made, there is no point in carrying out the assessment. The way in which this aspect of the arrangements is argued makes me think that there is a misunderstanding of the purpose of the banding assessment. The point is not for children to perform as well as they can, the point is that they sit the assessment and that they are allocated to a band which reflects their level of ability accurately.

92. The trust says that, where an issue is raised by either the parent or the school, the trust will accept an alternative assessment offered by the school in place of the banding assessment and will band the applicant accordingly. This is done on a case-by-case basis. Children with an EHCP which names the school are not banded and neither are Looked After or Previously Looked After Children. The arrangements provide expressly for this and say, in terms, that 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" to allocate the child into a band.

93. 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".

94. 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 having a lower ability band, the higher the percentage of children in that band who will be eligible for admission will be. 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.

95. 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

96. This is a lengthy determination, and I do not intend to repeat the arguments raised or my conclusions other than to say that 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. I also find that the arrangements are insufficiently clear in regard to the assessment arrangements for children with disabilities and the availability of reasonable adjustments.

97. I have not found any evidence to support the objectors' allegations that the banding arrangements will operate to disadvantage unfairly applicants from disadvantaged social groups or that local disadvantaged children will be displaced by high ability applicants from other areas. I do not consider that it is more likely than not that any parent reading the school's arrangements would perceive the school to be selecting based upon high ability levels. I find that the arrangements are as clear as they can be. I cannot find a set of admission arrangements to be unclear on the basis that some parents are unlikely to read them. Non-banded applicants and late applicants are given lower priority; however I do not find the arrangements to operate unfairly to these applicants. I find that a number of the objectors' most pressing and serious concerns would be obviated if children are able to sit the banding assessment in the familiar surroundings of their own Year 6 classrooms with

their teachers and teaching assistants on hand, and with a representative from the trust in attendance to explain and answer questions about how the banding assessment process operates.

Determination

98. 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 Trinity Multi Academy Trust for Trinity Academy St Edwards, Barnsley.

99. I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination. The school has agreed to make the necessary revisions.

100. 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. In this case I determine that the arrangements must be revised as quickly as possible and before 19 September 2022 which is the closing date for registration to sit the banding assessment.

Dated: 2 September 2022

Signed:

Schools Adjudicator: Marisa Vallely