



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3950-ADA3951

Objectors: Delta Academies Trust and Wakefield Metropolitan District Council

Admission authority: Trinity Multi Academy Trust for Trinity Academy Cathedral, Wakefield

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 Cathedral, Wakefield.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised 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), an objection has been referred to the adjudicator by Delta Academy Trust and Wakefield Council, (the objectors), about the admission arrangements for September 2023 (the arrangements) for Trinity Academy Cathedral (the school), a co-educational academy school for pupils aged 11 – 16 with a Church of England religious character. The objection is to the adoption of pupil banding.

2. The local authority (LA) for the area in which the school is located is Wakefield Metropolitan District Council. The LA is a party to this objection in its capacity as the local authority in which the school is located and as an objector. Other parties to the objection

are Delta Academies Trust, the Church of England Diocese of Leeds (the diocese), and the admission authority for the school, namely Trinity Multi Academy Trust (the trust).

3. There have been objections to two other secondary schools within the same Multi Academy Trust this year, both of which concern the adoption of banding arrangements for the first time for September 2023 admissions. These are Trinity Academy St Edwards, Barnsley (ADA3917-3920 / ADA3923 / ADA3937-3938 / ADA3947 3948 / ADA2953-3954 / ADA3963-3965 / ADA4067 / ADA4068) and Trinity Academy Bradford (ADA3592). The trust operates banding arrangements at two of its other schools, namely Trinity Academy Halifax and Trinity Academy Grammar.

Jurisdiction

4. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by Trinity Multi Academy Trust, which is the admission authority for the school, on that basis. The objectors submitted objections to these determined arrangements on 12 May 2022. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and are within my jurisdiction.

Procedure

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

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

- a. a copy of the minutes of the meeting of the trust at which the arrangements were determined;
- b. a copy of the determined arrangements, which include Supplementary Guidance and a video;
- c. the objectors' forms of objection both dated 12 May 2022;
- d. information provided by the LA in its capacity as the local authority for the area in which the school is located;
- e. a map of the area identifying relevant schools;
- f. the trust's response to the objections; and
- g. the diocese's response to the objection.

The Objection

7. The objection is in respect of the school's adoption of pupil banding for the first time for admissions to the school in September 2023. There are essentially eight key arguments put forward by the objectors:

- a. The consultation process which preceded the adoption of pupil banding was flawed (Paragraphs 1.45 – 1.48 of the Code).
- b. The complexity of the arrangements operates to cause unfairness to applicants from disadvantaged social groups (Paragraph 14 of the Code).
- c. Applicants from disadvantaged social groups are more likely to make late applications and be afforded lower priority (Paragraph 14 of the Code).
- d. The arrangements are unclear (Paragraph 14 of the Code).
- e. The complexity of the arrangements is such that parents will be unable to assess how likely it is that their child will be offered a place if an application is made (Paragraphs 1.27, 1.28 and 14 of the Code).
- f. The school will no longer offer places to local children (Paragraphs 14 and 1.8 of the Code).
- g. The arrangements are elitist and divisive (Paragraphs 14 of the Code).
- h. No adjustments are made to ensure that the banding assessment is made accessible to children with special educational needs and disabilities (Paragraph 1.31 and 1.32 of the Code).

Background

8. The school is a partially selective coeducational secondary school for pupils aged 11 to 16 with a Church of England religious character. It selects up to 10 per cent of pupils on the basis of aptitude for one or more of the performing arts: dance; drama; or music. The GIAS website (Get Information About Schools) indicates that the school opened in 2018 as an academy sponsored by Trinity Multi Academy Trust. It replaced another school on the same site which closed. There has been a secondary school on the same site since at least the 1950s. GIAS records the percentage of children eligible for Free School Meals as 35.7 per cent and the Progress 8 score as 0.77 per cent (well above average). The school's website indicates that it was the Times Educational Supplement's school of the year in 2019 and was rated Outstanding in all areas by Ofsted in May 2022.

9. Relevant extracts from the school's admission arrangements are set out below:

“... 1.2 Admissions will be Fair Banded (as explained below and in the Supplemental Guidance document).

1.3 The published Admission Number (PAN) for Trinity Academy Cathedral is 210.

1.4 The vast majority (90%) of the annual intake for the academy follows a broad and balanced curriculum on Trinity Academy Cathedral's Main Curriculum Pathway. The main pathway leads to a broad range of qualifications allowing students to access a wide range of career options and further education.

1.5 The academy also has a particular flair for and specialism in the Performing Arts. A small proportion (10%) of our intake are selected by aptitude for performing arts and follow a specialist provision called CAPA Juniors. Students interested in this pathway will follow a wide range of subjects and also spend time focused on Dance, Drama and Music.

1.6 Regardless of which pathway a student is applying for, applicants who sit the Fair Banding Assessment are considered for admission first. Those applying for a place on the CAPA Juniors pathway will also take part in an audition process....

Deadline for applications

3.1 All applications received will be considered in the following order:

1. Applications received by the closing date in the normal admissions round:

- for secondary applications the closing date is 31 October 2022;

2. For late applications received between the closing date for the normal admissions round and the end of the summer term the following date will apply:

- applications for secondary places received up to and including 23 November 2022 will be accepted as if they had been received by the closing date;

3.2 Applications received after these dates will be regarded as late applications and will be considered after all applications received on time...

Allocation of places

5.1 Places will be allocated on the basis of Fair Banding as permitted by the Department for Education (DfE) School Admissions Code. Pupils applying to TAC will be invited to sit a non-verbal assessment (based on cognitive ability) produced by a reputable national organisation.

For further details please see Supplemental Guidance. Applicants who sit the Fair Banding Assessment are considered for admission first.

Any applicants, including late applicants, who miss the September Fair Banding Assessment will be given a further opportunity to sit a Fair Banding Assessment in November.

Note: Applicants can only sit the Fair Banding Assessment once.

Any applicants who choose not to sit the Fair Banding Assessment will be 'non-banded' and will be ranked in order of priority (after all of the banded applicants), with the level of priority then determined with reference to the oversubscription criteria (below).

How Fair Banding works.

The assessment is not a traditional entrance exam which children either pass or fail. It is done to ensure that our intake exactly matches the ability profile of the children applying. To achieve this, all applicants (by the deadline) are invited to take a non-verbal reasoning assessment to divide them into 4 ability bands, from Band 1 at the bottom up to Band 4 at the top. We will admit the required number from each band based on the spread of ability of those applying.

The assessment is externally set by a well-established educational assessment agency and the papers are collected by the agency to be marked. The academy is then provided with a list of each child's assessment mark, similar to an IQ score, with 100 being the average. The marks are divided into four bands and we are instructed how many children to take from each band e.g. if 40% of those applying are identified in Band 2, then 40% of our intake has to be from this band. This ensures that the 210 places we offer reflect the ability range of our applicants.

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

Children in receipt of an Education, Health and Care plan (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 TAC as the appropriate school, will be admitted before any other children.

Oversubscription criteria:

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

1) Looked after Children and all previously Looked after Children; This refers to children who are:

- Subject to a care order made by the courts under section 31 of the Children Act 1989 – for the courts to grant a care order they have to be satisfied that a child is suffering or would suffer ‘significant harm’ without one;
- Children who are accommodated by the Local Authority on a voluntary basis under Section 20 of the Children Act 1989;
- Children who have been adopted from Local Authority care, children who are subject to a Child Arrangements Order and those with special guardianship immediately following being Looked After will all be included within the higher priority for Looked after Children (see explanatory note 13.1);

1a) Children who appear (to the admission authority) to have been in state care outside of England and ceased to be in care as a result of being adopted (see explanatory note 13.1);

2) Children who live in the school's catchment area, who have brothers and sisters attending the school at the time of admission (see note 13.5);

3) Children who show a particular aptitude for one or more of the performing arts: dance; drama; music. This will be determined through an audition process (see note 13.3). Students who are allocated on this basis will be placed on the CAPA Juniors Pathway (see note 13.2). This criterion applies only for 10% of the intake (21 students);

4) Children who have brothers or sisters in attendance at the school;

5) Other children who live in the school's catchment area;

6) Other children, with priority being given to those living nearest to the school.

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.

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

Consideration of Case

The Objection

10. The objectors have raised serious concerns about the potential effect of the adoption of pupil banding within the particular locality of the school. The LA has provided important contextual information at my request. The school is becoming increasingly popular and oversubscribed.

Table One: Number of first and second preferences received for the school in the last three years and the number of places offered and accepted

Academic Year	First preferences	Second preferences	Offered and accepted
22/23	296	109	210
21/22	249	86	210
20/21	248	78	210
19/20	154	50	210

Table 2: The number of late applications received for the school for admissions in the last three years

Academic Year	
22/23	31

Academic Year	
21/22	25
20/21	16
19/20	40

Table 3: A list of the number of applicants admitted to each Wakefield secondary school in the last three years and the published admission numbers (PAN) for each of these schools.

See below a table outlining the data requested.

	2022/2023	PAN	2021/2022	PAN	2020/2021	PAN	2019/2020	PAN
Airedale Academy	217	240	186	240	196	240	161	240
Carleton High	210	210	188	210	191	210	181	210
Castleford Academy	300	300	300	300	300	300	300	260
Crofton Academy	210	210	210	210	210	210	210	204
De Lacy Academy	165	210	157	210	140	210	151	210
Horbury Academy	240	240	240	210	210	210	210	210
Kettlethorpe High	332	350	360	350	320	320	320	320
Minsthorpe Community College	300	300	300	300	293	300	301	300
Ossett Academy	310	310	310	310	303	310	310	310
Outwood Academy City Fields	181	180	180	150	150	150	150	150
Outwood Academy Freeston	205	210	210	210	202	210	209	210
Outwood Academy Hemsworth	222	240	208	270	183	270	194	270
Outwood Grange Academy	360	360	360	360	360	360	360	360
St Thomas à Becket Catholic College	135	150	150	150	139	150	150	150
St Wilfrid's Catholic High	263	280	261	280	276	280	280	280
The Featherstone Academy	90	90	90	90	90	90	87	90
The King's School	210	210	210	210	210	210	210	210
Trinity Academy Cathedral	210	210	210	210	210	210	210	210

11. I asked the LA which alternative local secondary schools options there would be for local children who are unable to obtain places at the school. The LA has provided information for the most recent admission rounds, and a forecast for 2023/24.

“2021/2022

Trinity Academy Cathedral school was full on National Offer Day (NOD) with on-time applications. The nearest school to Trinity Academy Cathedral with places available on NOD (National Offer Day) with places was:

- Outwood Academy City Fields (distance for furthest pupil allocated a place which was not a preference – 3161.81metres (1.964 miles) (straight line). This school then filled up with on-time Cathedral allocations.

For Late applications the nearest school to Trinity Academy Cathedral with places was Outwood Academy Hemsworth – furthest distance was 14375.26 metres (8.9 miles) (straight line).

Following the lack of places in the west of the District the LA agreed the following additional bulge classes:

- Outwood Academy City Fields increased places by 30 prior to NOD
- Horbury Academy increased places by 30 prior to NOD
- Kettlethorpe High School increased places by 10 post NOD

Following this we still had to allocate late applications for Cathedral to Outwood Hemsworth Academy in the East of our District and provide home to school transport. These children had 9.5 mile walking distance to travel to access this school and qualified for free LA transport which was on taxi type transport due to the travel times on public service buses.

2022/2023

Again, we had on-time applicants who lived in the Trinity Academy Cathedral catchment area who were refused, and we allocated the following school:

- Outwood Academy City Fields – (distance for furthest pupil allocated a place which was not a preference – 3228.89m).

For September 2022 we still have places at Outwood Academy City Fields as the number of places at the school was increased to 210 post NOD. The furthest address for a child in Cathedral catchment allocated Outwood Academy City Fields is 3035.81metres (straight line) or 2.1 miles (walking distance).

Forecast 2023/24

In the LA's latest School Organisation Plan Trinity Academy Cathedral is expected to be full again with local catchment area children and we will not be able to place all on-time catchment area children in this school. This situation will be exacerbated, however, if via the banding policy children are admitted into the school from outside

their catchment area. This will mean local children will then have to travel to further away schools. This already happens to a lesser extent with the specialist performing arts criteria at the school where children come from out of district, as well as out of catchment, and deprive local children places at the school.

Whilst the LA feels overall, school places should be available at Kettlethorpe High (all other nearer schools ie Horbury, Ossett, City Fields and Outwood Grange) are forecast to be full. The distance to this school is likely to be over 3 miles walking distance for Trinity Academy Cathedral children and will entitle them for free LA transport”.

12. Google Maps indicates that Kettlethorpe High School is 2.4 miles from the site of Trinity Academy Cathedral, a 50 minute walk or a 30 minute bus journey. I appreciate that children seeking places at the school do not live on the school site. I have used the school's address as a proxy for home address simply to gain a rough idea of what the alternative schools might be for local children who are not allocated a place at Trinity Academy Cathedral.

13. It is clear from what the LA has said that, even if banding were not being introduced for 2023 admissions, not every local child whose parents apply would be offered a place at the school. Indeed, as I understand the position, the school is currently unable to accommodate all in-catchment applicants. From the information provided, it is clear that local children whose parents submit late applications are unlikely to be offered places under the school's existing arrangements. It is difficult to predict what will emerge once banding is introduced. The fear is that more children from further afield will apply. Those children will continue to assume lower priority for the non-selective places than in-catchment applicants due to the oversubscription criteria. The question is whether the adoption of banding will bring about an increase in applications from higher ability children, thus increasing the percentage of those children who will be admitted. If it is possible to make a direct correlation between in-catchment children and lower levels of ability (which is not necessarily the case), there is a risk that local children will be displaced and have to travel long distances to school if it becomes the case that Kettlethorpe High School and all other nearer secondary schools are unable to accommodate them.

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

15. When considering the question of unfairness, adjudicators tend to ask the question of who is being affected unfairly and why. What is alleged here is an unfairness of the most serious kind, namely that the additional complexity introduced by the adoption of banding will in effect render this school inaccessible to children in the most disadvantaged social groups; and that this outcome is more likely than not as the school is located in an area where there are many such local children. The problem of in-catchment children not being able to get places at the school already exists and has resulted in some late applicants having to travel up to 9 miles to and from school every day. Since the problem already exists, it is not being caused by the introduction of banding, therefore what I need to consider is whether banding will exacerbate a problem which is probably being caused due to there being more children living in the catchment area than the school can accommodate and the school's burgeoning reputation and popularity.

16. The diocese has said that there is no reference to Fair Banding in its guidance, however it acknowledges that banding is an allowable approach to admissions and makes no judgment, save to acknowledge that Banding may be "a contextually specific approach to admissions adopted by LAs, schools and academies". The diocesan guidance includes sample admissions policies. None of these reference banding. The diocese did not consider it appropriate to make a blanket statement in relation to banding, save to say that it must comply with the requirements of clarity, fairness and objectivity set out in the Code, and the requirements of all other relevant legislation.

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

18. I asked whether these two other schools are in areas which are similar to that of Trinity Academy Cathedral in terms of the eligibility for Pupil Premium Grant, Free School Meals and other indicators of deprivation. The trust has told me that (in the absence of KS2 data), what can be said is all three schools have Cognitive Assessment Test (CATs) results which are below national averages. The Standard Age Score at the school was 94.1 this year, for Trinity Academy Grammar (TAG) the score was 95.2 and for Trinity Academy Halifax (TAH) the score was 97.2 (all below National Average). The cohort for Trinity Academy Cathedral is said to have a particular weakness with the 'non-verbal' section (thinking with shapes), which is not replicated amongst the TAH and TAG cohorts.

19. The ethnic make-up of the school is more diverse than TAH but less ethnically diverse than TAG. So, for example, just over two thirds (68 per cent) of the cohort are White British (as compared to around one third of the cohort at TAG and 88 per cent at TAH). The trust says:

“At TAC (Trinity Academy Cathedral), 8% of pupils are of Pakistani ethnicity (this is 36% at TAG and just over 1% at TAH). The remaining quarter of pupils come from a diverse range of ethnicities, although the majority are of White ethnicities.

At TAC, one quarter of the cohort have English as an additional language (this compares to half the cohort at TAG and less than 5% at TAH).

TAC has a slightly higher level of deprivation to TAH. Both schools have more than 2 in 5 pupils eligible for Pupil Premium (although this figure is 45% at TAC vs 41% at TAH) – significantly above the national average (nationally, approximately 28% of pupils have FSM Ever 6). TAC also has a slightly higher proportion of pupils currently eligible for Free School Meals than TAH (36% at TAC, compared to 32% at TAH). These current FSM figures are themselves in excess of the national average for FSM Ever 6. At TAG, almost half (46%) are currently eligible for FSM.

By contrast, the pupils at TAH and TAG both live in areas which are slightly more deprived than TAC (although a significant majority of pupils at TAC still live in the most deprived areas). For example, 63% of pupils at TAH and 59% at TAG live in areas in the bottom two deciles of the IDACI index (vs 53% at TAC). The picture varies, depending upon the specific deprivation index – for example, 71% of the cohort live in areas in the bottom two deciles for crime (vs 78% at TAH and 65% at TAG)”.

20. The trust says that there has been no evidence of the manifestation of the concerns expressed by the objectors in the other trust schools which use banding arrangements of the type adopted for this school. The policy has been in operation at TAH and TAG for three and two years respectively. The trust has monitored the outcome using several metrics, namely proximity of home address, pupil characteristics and reading ages.

“Average distance from school

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

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

The characteristics of the cohorts have not altered either:

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

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

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

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

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

21. I was reassured that the introduction of banding in these other schools, which have broadly similar intakes, has not resulted in an increase of the admission of children who do not live locally. I asked the trust why it has chosen the particular form of banding which has been adopted; whether it might consider adopting banding based upon local ability levels in light of the particular concerns expressed by the objectors (although I wondered whether this would necessitate testing all local Year 6 children); and what the perceived disadvantages are in relation to banding based upon local ability levels. The trust has said that banding with reference to the ability range of children in the local area is likely to be a more problematic measurement than a simple, light-touch 45-minute multiple choice assessment. The trust has informed me that the cohort which entered the school in September 2021 was academically below the national average (using CATS outcomes, in the absence of KS2 data). This is said to “mirror the usual Trust profile i.e. being below the NA (National Average) upon entry”. For this reason banding in accordance with national ability range was discounted as it could disadvantage applicants from the local area.

“Of the two remaining options, we feel ‘the full range of ability of applicants for the school’ is fairer than ‘the range of ability of children in the local area’ given that the local children are prioritised already via our oversubscription criteria (and that has clearly been borne out on the two schools in which we have operated FB to date).

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

For the September 2021 intake the average distance was 1.27 miles, the furthest 12.43 miles. For the 2022 intake those figures are 1.40 miles and 12.43 miles. Compared to TAH, for example, where the average distance was 1.20 miles before FB and 1.06 miles after its introduction, the school isn't as 'local' as some objectors may be stating. Moreover, the furthest distance is significantly above the furthest distance recorded at both TAH and TAG for both the 2021 and 2022 intake".

22. I note that these distances are further than those supplied by the LA. This appears to be because the LA data relate to the applicants for the non-selective places and because children offered places under the CAPA Juniors programme travel from further away. The trust emphasises that the adoption of a catchment area which is local to the school and use of proximity of the school to the applicant's home address as oversubscription criteria ensures that local children are given priority. This is further ensured by working with local primary schools to enable the majority of local children to sit the banding assessment in their Year 6 classrooms. The trust says that it has made contact with a number of local primaries and has received positive responses from the leaders of those schools. It has similar systems in place for the two schools already operating banding, which ensures that all local primary children have the chance to sit the banding assessment in the familiar surroundings of their classroom, with their Year 6 teacher and a member of the school's staff in close proximity. Applicants are also able to sit the banding assessment at the school on a Saturday morning and further bespoke follow-up assessment(s) are offered for those that missed the opportunity and/or moved into the area after the assessment dates. The trust has confirmed that all seven of the academy's main partner primary schools have confirmed that they are happy to support and facilitate this process.

23. I will now consider each aspect of the objection in turn.

Consultation (Paragraphs 1.45 – 1.48 of the Code).

24. The objectors consider that the consultation process leading up to the determination of the school's 2023 admission arrangements was not conducted in accordance with the requirements of the Code and the 2012 School Admissions Regulations. In particular, it is alleged that the parents of children in the catchment area for the school, and also those with children in neighbouring catchment areas, who have an interest in their children attending the school, were not consulted on the proposed admission arrangements. It is further alleged that the Delta Academy Trust, which is the admission authority for five schools in the Wakefield area (De Lacy Academy, England Lane Academy, Simpsons Lane Academy, Willow Green Academy and the Vale Primary Academy) was not consulted directly.

25. Relevant paragraphs of the Code are paragraphs 1.44 to 1.48 and specifically paragraph 1.44". 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."

26. The trust has said in response that the consultation process included the following:

"Monday 6 December – Rationale for the consultation, was sent out to all stakeholders. This information contained the consultation period dates, along with a contact email address for questions or contributions towards the process.

The Stakeholders contacted via email:

1. Students – Letter emailed to parents/carers of TAC's pupils
2. **Wakefield Primary Schools**
3. **Wakefield Secondary Schools**
4. All TAC personnel
5. Local Authority (Wakefield Council)

6. Neighbouring LAs
7. Diocese Board of Education – Richard Noake (Director of Education)
8. Performing Arts Groups

Other communication:

- The Rationale and supplemental guidance were displayed on the home page of the TAC Website, during the whole of the consultation period.
- A public notice was displayed within the Wakefield Express, both on-line and broadsheet, for 1 week from Thursday 9 December.
- An Information Evening was held at TAC on Monday 17 January 2022. Two sessions were available (4.30pm and 6.00pm).

This is a wide-ranging group of stakeholders and, we believe, addresses the requirements of the SAC. We also consider the two emboldened parties above address the requirements of the Code in relation to the latter part of the objection. These schools are part of the Trust in question, and I believe 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 (a) is an ill-judged attempt to trip up the thorough TAC consultation process on an unreasonable technicality. As a final example, 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. Furthermore, in the Admissions Policy of de Lacy Academy – the first one you have listed above – it states *‘the De Lacy Academy Advisory Body will act as the Admissions Authority for the Academy as part of the coordinated scheme with the local authority.’*

27. 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 its admission 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.

28. 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 Trust which was not consulted directly, all I can do is to state this as a fact. I am, however, concerned about the apparent lack of

consultation with parents of children between the ages of two and eighteen, many of whom will have a direct interest in the outcome of the consultation. I note that some attempts were made to raise awareness through the publication of the Public Notice in the Wakefield Express and the Information Evening sessions. Normally, admission authorities for secondary schools increase parental awareness by asking the schools they consult with to convey a message to the parents of their pupils. I uphold this aspect of the objection. I find that more was required in order to fulfil the consultation requirements.

Complexity (Paragraph 14 of the Code).

29. The admission arrangements are said to be complex and difficult for parents to understand. They contain both banding and “further selection” based upon aptitude for the performing arts. It is claimed by the objectors that the complexity “gives an advantage to more articulate parents”. Potentially (they say) a parent would have to complete three application forms. The school is said to be located in the vicinity of a number of local housing estates where there are many children with English as an additional language, a high level of deprivation and a high number of children who are considered vulnerable (either through SEND (Special Educational Needs and Disabilities) and/or Safeguarding). It is suggested by the objectors that a banding system will be detrimental and unfair to these local children whose parents would normally express a preference for the school. Many parents in the school’s catchment area are said to struggle with the basic task of completing and submitting the simple Common Application Form (CAF). The objectors’ concerns are that these parents will not engage with the banding assessment; will not understand how the admission arrangements will work for their child; and will be unable to make an informed choice when expressing preferences for schools.

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

31. Paragraph 14 of the Code requires 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”.

32. The trust says that it strongly believes that the arrangements and the supplemental guidance are clearly understood by parents, given the range of help and resource offered by the trust and the school. This is said to include significant bespoke support, including translations, videos and individual explanations wherever required. The trust says it has “extensive experience in delivering banding arrangements in areas of social deprivation (and diverse ethnic backgrounds, including historically difficult to reach communities e.g. Gypsy Roma Travellers, although I appreciate that this isn’t necessarily the case with TAC)... We attempt (and have considerable success) in making the process a simple one to follow. Register for the FBA (or, if you are in a local primary school, have it registered for

you), and we do the rest. The consistent message then is about performance in the FBA not being a factor in entering the academy, which again we do effectively.”

33. The arrangements are undoubtedly complex because they incorporate both banding and partial selection. The Code permits admission authorities to have both, and this combination could potentially necessitate not only three application forms but also an audition for the selective places. I accept that the description of the process that will be followed should any band not fill with pupils assessed and designated to that ability banding appears complex; however, in if the arrangements did not explain this process, they could be said not to have sufficient clarity to comply with paragraph 14 of the Code. It is a necessary part of the arrangements. The evidence from the local authority indicates that the school is oversubscribed under its September 2022 admission arrangements (which by implication are less complicated). The oversubscription criteria in the 2023 arrangements are the same as those in the 2022 arrangements. In September 2022, the school had so many applications that it was unable to accommodate all applicants living in the catchment area.

34. What is alleged here by the objectors is not that local parents will not apply, but that they will not engage in the banding process and that this will disadvantage them considerably. It is difficult for me to reach a conclusion on this point without any evidence at all. What I do know is that many local parents living in the school’s catchment area (which is an area of social deprivation) are making successful applications. So, what will they need to do differently under the 2023 admission arrangements? If their children sit the banding assessment at their primary school on a normal day, as I understand it the parents would need to opt out of this arrangement to stop their children from participating in the assessment. I also understand that all local primary schools have agreed to facilitate this arrangement.

35. I have seen this arrangement operate effectively. For example, I am aware that every child in a Wandsworth primary school sits the Wandsworth selection tests in their own classroom with their Year 6 teacher. The test is managed in a low key way. Where it is the case that children are banded with no additional effort required from their parents, all the parent needs to do is submit an application through the CAF. This is no different to what parents need to do under the existing arrangements. I do not uphold this aspect of the objection.

Late applications (Paragraph 14 of the Code).

36. The objectors argue that every year there are a high number of families who do not apply for a school place on time due to difficulties with English or lack of engagement in the education process. Late applicants are unable to sit the banding assessment and are given a lower priority than applicants who have been assessed and allocated to an appropriate band. The arrangements place these children at a further disadvantage. In particular this is said to be likely to adversely affect children from a disadvantaged background but who nevertheless themselves are able.

37. The trust says that applicants who do not undertake the banding assessment and/or apply late are given another opportunity to do so in early December (as it will be). Applicants who move into the Wakefield area after the deadline for submitting an applications are also offered the opportunity to sit a late test.

38. 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 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 23 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.

39. Applicants who will be disadvantaged are those who apply after 23 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 wondered 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 23 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 23 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.

40. My view on this point is that the trust is taking all reasonable steps to ensure that children are allocated to a band. Parents who do not complete and submit the CAF by 23 November would be disadvantaged whether or not the school has banding arrangements. 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 a number of parents apply late. This is a problem for their children because it disadvantages them. Late applicants are not considered for places until after offers have been made to all applicants who have applied by the closing date. I am aware that this practice is followed by other local secondary schools. The position is no different for this school. There are sound administrative reasons for imposing deadlines by which applications must be submitted. I do not uphold this aspect of the objection.

The arrangements operate to further disadvantage groups of children who are already socially disadvantaged (Paragraph 14 of the Code).

41. There is said to be “no acknowledgement or mitigation” in the arrangements of the disproportionately adverse impact on families who are already educationally disadvantaged. These families are said to be predominantly from disadvantaged social groups. There are also concerns about disadvantaged children/children with EAL (English as an Additional Language) being assessed and what arrangements the school will make to ensure that all children are given the opportunity to be assessed (or indeed to ensure that the parents of these children know that their child will be assessed).

42. The trust says it has:

“... significant recent experience of administering the FBA in similar circumstances. Both [of the trust schools in which banding is operated] serve ‘socially disadvantaged’ areas and the process has been successfully delivered without any group being disadvantaged. As mentioned, that is partly because we enjoy strong positive relationships with our local primary schools and they facilitate the FBA in their schools. This means that the vast majority of pupils, unless they opt out of the FBA, sit it in the familiar surroundings of their own Y6 classroom, with both their teacher/TA and a member of the Trinity administrative team present.

We explain the nature of the assessment (light touch, multiple choice and only 45 minutes long) and explain that a pupil’s performance in it has no bearing on his/her chances of gaining admission to TAC; that still depends on the OS criteria referred to below”.

43. What is alleged here is that the adoption of banding will operate to disadvantage groups which are already socially disadvantaged. This is a very serious concern, and because the arrangements are not currently in operation, I have no evidence upon which to base a firm conclusion on this point. Potential disadvantages are said to be that local parents will be deterred from applying, will not ensure their child is allocated to a band, or will apply late. All of these factors (or indeed any one of them) would likely mean that their child will not be offered a place at the school. Possible causes might be that the arrangements are so immediately complex, parents will not even attempt to engage sufficiently in order to read what they have to do and will not watch the video. If local children sit the banding assessment in their own primary schools on a school day, all the parent needs to do is complete and submit the CAF by 31 October (or 23 November at the latest).

44. In order to apply for a secondary school place, local parents need to do this through the local authority. The school’s arrangements signal the various deadlines. The local authority’s website (which is not within my jurisdiction) is not immediately clear about the closing date for secondary school applications and the significance of not submitting the CAF by that date. The admissions page tells parents the date upon which the application process opens, there is a link enabling parents to open an account, and parents are advised of the offer date. The closing date is made immediately clear on the first page in

the Parents' Guide. Whilst this is not a matter for me, given that there are a number of parents who apply late, it would be helpful to signal the closing date for applications and the significance of not applying on time on this opening page.

45. Now that the trust has secured the agreement of local primary schools to administer the banding assessment, the arrangements need to tell parents at the earliest possible stage of starting to read the arrangements first that they don't have to do anything in terms of registering for or sitting the banding assessment if their child is attending any of the [listed] primary schools, and second that applications for places at the school must be made to the local authority via the CAF before 31 October. I acknowledge that this might be asking more than expected of admission authorities generally, however in my view clarity on these additional points is needed in the context of the school's location. To the extent that additional clarity is required, I uphold this aspect of the objection.

Lack of clarity about how the process will operate (Paragraph 14 of the Code).

46. The objectors say that the local primary schools have been consulted, and it appears that they will be expected to hold/facilitate the banding assessments. The objectors have concerns about whether the primary schools are fully engaged and aware of what the school is proposing. There are concerns that the school has not fully considered the additional impact upon local primary schools of having to facilitate the banding assessment. As above, the trust has informed me that primary schools have agreed to facilitate the administration of the banding arrangements, therefore I do not uphold this aspect of the objection.

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

48. The objectors say that the complex nature of the academy's proposed policy of banding together with priority based upon aptitude in the performing arts, will not allow any parent to have a reasonable estimation of securing a place at the school when making their choice of schools. It is said that, even parents who live close to the school, will be unable to determine if they can secure a place for their child at their local school. It is also said that the description of the process that will be followed should any band not fill with pupils assessed and designated to that ability banding is very complex and overlapping. There are sixteen possible permutations as to how a child assessed in any of the four bands could be allocated a place under these arrangements.

49. It is also alleged that the arrangements are misleading. The academy prospectus stresses that the school is the highest performing school in Wakefield and that academies in the trust are "in the top 10% of highest performing in the country". This statement, together with the wording which refers to the Fair Banding Assessment as 'similar to an IQ score', the lack of familiarity with banding arrangements and the barriers to engagement by parents all lead to "a significant risk that the arrangements will be perceived by parents and the community as representing a means of choosing higher ability pupils". The effect of this

perception risks being compounded by the decision to band by the range of ability of applicants rather than the other options set out in paragraph 1.25 of the Code, namely by the range of ability in the local area or the national ability range.

50. Paragraph 1.25 of the Code states:

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.

The school intends to use the form of banding in 1.25 a).

Paragraphs 1.26 and 1.27 are also relevant.

1.26 Admission authorities' entry requirements for banding must be fair, clear, and objective...

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.

51. The trust says in response: "We attempt (and have considerable success) in making the process a simple one to follow. Register for the FBA (or, if you are in a local primary school, have it registered for you), and we do the rest. The consistent message then is about performance in the FBA not being a factor in entering the academy, which again we do effectively". The trust says that all applicants who sit the banding assessment are told before they begin that the assessment that the test result will not determine which applicants will be offered places because this is determined by the oversubscription criteria.

52. 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. For both of these and for different reasons, parents may not be able to know how likely it will be that their child will be allocated a place. In the case of home to school distance, much will depend on how many applicants in any given year live nearer which

cannot be known in advance. In the case of random allocation it will depend on how many other applicants are also applying, which also cannot be known in advance. 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.

53. As to whether the arrangements can be construed as misleading, whilst I understand the point being made, I note that the statements referred to are not set out in the admission arrangements. Schools' prospectuses encourage parents to apply, and most set out positive claims about the school's achievements. The admission arrangements and the video state clearly that the banding assessment is not a traditional entrance exam which children either pass or fail. I do not uphold this aspect of the objection, which is slightly at odds with other aspects of the objection suggesting that parents might NOT read and understand the arrangements. Here it is suggested that parents will have read the admission arrangements and will understand that their child will be assessed, not understand the statements made which explain that the assessment is not a test of high ability, but also have taken the trouble to read the prospectus. In my view, the concern is that parents will not read either but as long as their children are assessed and they apply on time, local children living in the catchment area will have the best possible chance of being admitted.

The school will no longer offer places to local children (Paragraphs 14 and 1.8 of the Code).

54. The objectors fear that the adoption of banding alongside priority for applicants based upon aptitude in the performing arts will make it increasingly unlikely that catchment area children will secure most of the places at the school. In particular, it is said that in the 2022/23 Year 7 admissions round 63 children who live in the local catchment area did not get into the school due to the volume of applications locally, and that 18 children of the 21 admitted via the CAPA Juniors oversubscription criterion were from out of the local area and out of the Wakefield District. I note that applicants for the CAPA Juniors programme who are able to demonstrate aptitude for the performing arts in the audition process are then prioritised by means of living in the catchment area and proximity to the school. The fact that 18 of the 21 places were offered to applicants who do not live in the catchment area appears to be either because local applicants did not apply for CAPA Junior places or were unable to demonstrate the required aptitude.

55. Paragraph 1.8 of the Code provides 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...". Affording priority based upon eligibility for the CAPA Juniors programme is an oversubscription criterion, therefore paragraph 1.8 of the Code applies. In order for this oversubscription criterion to be in breach of paragraph 1.8 there must be a disadvantage to an identifiable social group, and the disadvantage must also be unfair.

56. The school was formerly known as Cathedral Academy. The last Ofsted report in November 2016 indicates that Cathedral Academy was rated Inadequate. The report refers to the CAPA Juniors programme as follows: “The curriculum is strong and very positively influenced by the performing arts which significantly enhance pupils’ spiritual, moral, social and cultural development. Inspectors were struck by pupils’ enthusiasm for arts and their confidence. The work of CAPA (Cathedral Academy for Performing Arts) Juniors, pupils who follow an arts rich curriculum, is impressive. A performance seen by an inspector was almost professional in its standard”. This appears to be a valuable specialist resource for children with aptitude in the performing arts, which is something to be encouraged.

57. The objectors do not appear to be objecting to the school’s arrangements for partial selection *per se*, they claim rather that a combination of banding and partial selection will reduce the likelihood of local children being offered a place. Whilst there is evidence that local children are being displaced by the adoption of partial selection, the number admitted under this oversubscription criterion is limited to ten per cent. The trust claims that this aspect of the arrangements is continuing the traditions of the predecessor school. Certainly in 2016 the programme was running well and delivering significant benefits. I accept that the CAPA Juniors’ programme is displacing local children and therefore potentially disadvantaging them, but I do not consider this to be unfair. The benefits offered by the programme outweigh the displacement of a small number of local children. Partial selection on the basis of aptitude in the performing arts is expressly permitted the Act and the Code.

58. For the reasons set out above, I have found that there is no evidence that the adoption of banding will necessarily displace local children. I now consider whether a combination of banding and partial selection causes an unfairness to local children under paragraph 14 of the Code. There is evidence that some children living in its catchment are currently not able to secure places at the school, however this appears to be due to the number living in catchment and the school’s increasing popularity since becoming part of Trinity Multi Academy Trust. In 2018 the number of first preferences was 154. The CAPA Juniors Programme was operating at that time, but presumably there was no issue about whether this displaced local applicants because most were likely to have secured a place. The number of first preferences for the school increased from 249 to 296 for September 2022 admissions. The ‘disadvantage’ to local children identified by the objectors already exists under the 2022 admission arrangements. The school is unable to offer places to everyone who applies and would be unable to offer places to all in catchment irrespective of whether it operates banding arrangements. Given the school’s increasing popularity, arguably the way to accommodate more local children would be to increase the PAN. I do not uphold this aspect of the objection.

The arrangements are elitist and divisive (Paragraphs 14 and 1.8 of the Code).

59. The other 18 secondary schools in Wakefield are said to use admission policies based upon priority for applicants who live in the relevant school’s catchment area and sibling links. The arrangements for these other schools are claimed to be well established and understood by parents and schools alike and to give local children a “high probability” of securing local schools. By contrast, the admission arrangements for Trinity Cathedral

School for admissions in September 2023 are said to be “both divisive and elitist in terms of a move away from the collective group of admission policies that work for local children and local schools”. The trust says in response that there is a local secondary school which affords priority based upon religion, therefore it is incorrect to suggest that the admission arrangements for all local secondary schools are based exclusively upon the same model.

60. It is a matter for the trust to determine the admission arrangements for the school. It is able to adopt whatever arrangements it chooses provided they comply with the Code and all other relevant legal requirements. There is no obligation upon the trust to adopt the same, or similar, arrangements to those operated by other schools in the area. The arrangements themselves are not elitist or divisive. As long as local children apply, the ability range admitted will reflect the ability range of local children, and those local children will be offered such places as are available up the PAN. The oversubscription criteria will ensure that local children continue to be prioritised. I do not uphold this aspect of the objection.

No adjustments are made to ensure that the banding assessment is made accessible to children with special educational needs and disabilities (Paragraphs 1.31 and 1.32b of the Code).

61. Paragraph 1.31 of the Code provides that tests for all forms of selection must be clear, objective, and give an accurate reflection of the child’s ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability. Paragraph 1.32b 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”.

62. The objectors say that the admissions policy includes reference to children with a statement of Special Educational Needs or Education Health and Care Plan. The admission policy also includes the section from the Admissions code in respect of statutory requirements for children with SEND but who do not have an EHCP. However, there is nothing in the arrangements or in the admissions section of the academy website which says anything about supporting children with additional needs in accessing the Fair Banding Assessment. Admission authorities are required to 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. The objectors consider that this is an important way of securing inclusivity and ensuring that the parents of children of all abilities, or with additional needs feel comfortable in asking their children to complete an assessment process and in requesting the reasonable adjustments their children are entitled to receive and schools are required to offer.

63. The trust says in response that children with EHCPs do not have to sit the banding assessment and that it makes all adjustments necessary for any applicant with a disability. The trust says it has “experience of this nature and work(s) with school and/or parent/carers to ensure that the FBA is accessible to all. Moreover, even though the outcome of the FBA has no bearing on the applicants’ chance of entering the academy, we still look

sympathetically on any situation where an applicant, who does not have an EHCP, may have difficulty accessing the FBA. When any issues are raised by the school and/or parent/carer, we would allow a substitute teacher assessment to be used to allocate that pupil to a band. As you would expect, we address any issues raised on a case-by-case basis. Finally, as the outcome of the FBA does not impact on a pupil's chance of entry into the academy, we do not generally offer additional time or the like (which might be the case in an official examination, as an example), although we have been open to such requests in the past if the primary school thought there was a social need".

64. 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".

65. 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.

66. 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

67. 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 fact that the banding assessment will be carried out in local primary schools, the closing date for submission of the CAF, the assessment arrangements for children with disabilities and the availability of reasonable adjustments.

68. I find that a number of the objectors' most pressing and serious concerns will 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. Given that this will be the case, I do not find that parents from disadvantaged social groups will fail to engage with the assessment. Where children are allocated to a band without the necessity for their parents to complete any additional steps, the application process will be no different to that which exists under the 2022 admission arrangements. Late applicants are disadvantaged, as is the case generally, this disadvantage has not arisen as a result of the adoption of banding and is not unfair.

69. I do not find the arrangements to be misleading. There is no requirement in the Code that a parent must be able to understand the outcome on their application. The requirement is that the process for determining the outcome is explained clearly. I find that the trust has taken care to ensure this is the case. I find that the arrangements give priority to local children. Whilst there is evidence that the majority of CAPA Junior places, which are ten per cent of the PAN, are not being allocated to local children, I do not find this to be a disadvantage to local children which is unfair.

Determination

70. 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 Cathedral, Wakefield.

71. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised 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