



Office of
the Schools
Adjudicator

Determination

Case reference: REF4199

Referrer: Barnsley Metropolitan Borough Council

Admission authority: Trinity Multi Academy Trust

Date of decision: 31 October 2023

Determination

I have considered the admission arrangements for September 2024 determined by Trinity Multi Academy trust for Trinity Academy St Edwards, Barnsley, in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to the school's use of pupil ability banding as a form of selection, the arrangements conform with the requirements. I have also found that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 28 February 2024.

The referral and jurisdiction

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act) an objection was referred to the adjudicator by Barnsley Metropolitan Borough Council (the local authority) about the admission arrangements (the arrangements) for Trinity Academy St Edward's (the school) for September 2024. The school is an academy school for children aged 11 – 16 in Barnsley.
2. The objection related to the school's use of pupil ability banding, which is a form of selection. This was first used by the school in its 2023 arrangements. 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 under section 88C of the Act by the board of directors of the trust, which is the admission authority for the school, on 06 February 2023 on that basis.

3. Paragraph 3.3 of the School Admissions Code (the Code) states that objections cannot be brought which, “raise the same or substantially the same matters as the adjudicator has decided on for that school in the last 2 years”. Objections had been raised in 2022 and decided in 2022 on the school’s use of banding. These determinations were ADA3917, ADA3918, ADA3919, ADA3920, ADA3923, ADA3937, ADA3938, ADA3947, ADA3948, ADA3953, ADA3954, ADA3963, ADA3964, ADA3965, ADA4067, ADA4068). As a result of this I have no jurisdiction to consider the arrangements under section 88H of the Act. However, having had sight of the school’s arrangements it appeared to me that the matter raised might not conform with the requirements relating to admissions. I have accordingly used my power under section 88I(5) of the Act to consider the arrangements for the school. In this determination, I will accordingly refer to the local authority (which made the initial objection) as the referrer.

4. When I considered the arrangements I identified some matters, including but not limited to the matter raised by the referrer, which it appeared to me did not or may not meet the requirements. I set out my findings in regard to those matters not raised by the referrer in the section in this determination which is entitled ‘Other Matters’.

5. The parties to this case are Trinity Multi Academy Trust, which is the admission authority for the school (the trust); Barnsley Metropolitan Borough Council which is the local authority for the area in which the school is located, and which referred this matter to the adjudicator (the local authority) (the referrer); and The Diocese of Leeds, which is the faith body for the school (the diocese).

Procedure

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

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

- a) the referrer’s form of objection dated 15 May 2023 and supporting documentation, including documents labelled Appendix A and Appendix B;
- b) a copy of the minutes of the meeting of the trust board at which the arrangements were determined;
- c) a copy of the determined arrangements as contained in a document entitled “Admissions Policy”;
- d) a copy of the document “Fair Banding Assessment Supplementary Guidance” (the supplementary guidance) which accompanies the arrangements;

- e) the registration form for the banding assessment;
- f) further information provided by the parties at my request or invitation;
- g) information available on the websites of the school, the local authority and the Department for Education (DfE); and
- h) a previous determination related to the school, case references ADA3917, ADA3918, ADA3919, ADA3920, ADA3923, ADA3937, ADA3938, ADA3947, ADA3948, ADA3953, ADA3954, ADA3963, ADA3964, ADA3965, ADA4067, ADA4068

The Referral

8. The referral concerns the school's use of pupil banding. This was introduced for the first time for admissions in 2023. The referral asserted that the use of banding is having a "detrimental effect on young people and the community" in that local children and siblings of current pupils are experiencing difficulties in gaining places at the school, lower ability children are offered the lowest number of places, and a low number of places has been offered to children in receipt of free school meals. The local authority has expressed their "wish for this Fair Banding Policy to be retracted". The local authority asserted that, "There are various concerns in respect of this policy. The school was needed to serve the local planning area and our statistics demonstrate local children and siblings are not gaining places. Lower ability children also being offered the lowest number of places coupled with a low intake of free school meals children are just some of our deep concerns. Along with the offering distance which would have been approximately 1.736 miles If this Fair Banding policy had not been introduced."

9. The local authority also stated that, "All secondary schools continue to vehemently object voicing their concerns to us about this policy... It continues to be the focus of discontentment and is further damaging productive working relations across our Secondary Headteacher networks." I note that the schools adjudicator has not received any objections to the 2024 arrangements from any person or body other than the local authority. I must also be clear that my jurisdiction is to determine whether or not the arrangements conform to relevant legal requirements; any effect the arrangements may have on relationships between persons or bodies is not a matter for the schools adjudicator and not something which I am able to take into account.

10. The local authority did not indicate the parts of the Code that they believe the arrangements contravene in respect of the matters raised. I have determined that the following parts of the Code are applicable in this case:

Paragraph 14: "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

Paragraph 1.8: “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

Paragraph 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.”

Paragraph 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.”

Paragraph 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.”

Paragraph 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.”

Background

11. The school is a co-educational free school for 11-16 year olds in Barnsley, South Yorkshire and is part of the Trinity Multi Academy Trust. The school is in an urban area and opened on 01 September 2021 with capacity for 900 children. The school has a Church of England religious character; it has not yet received an Ofsted inspection.

12. The DfE’s website “Get Information About Schools” (GIAS) shows that there are four other schools admitting secondary aged children within three miles of the school, two of

which have a religious character. One of these is Christian, the other Church of England/Roman Catholic.

13. The arrangements describe the school's approach as "fair banding" and explain this as follows: "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 nonverbal 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."

14. Pupil ability banding is a permitted form of selection by section 101 of the Act as reflected in paragraph 1.25 of the Code. The school's approach is to use a form of banding which is designed to produce an intake which is representative of the full range of ability of applicants for the school and this is expressly contemplated in both the Act and in paragraph 1.25a of the Code.

15. The arrangements use the terms 'banded' and 'non-banded'. Banded applicants are all those who sat the banding test plus those who are allocated to a band without the need to sit the test. Those who are allocated to a band without the need to sit the test are those who are banded by teacher assessment as they either: have an Education, Health and Care Plan (EHCP); are looked after (LAC) or previously looked after (PLAC); or they have special educational needs or disabilities (SEND) and the use of teacher assessment has been agreed by the school. Non-banded applicants are those who did not sit the banding test and who were not eligible to be allocated to a band without doing so.

16. In the event of oversubscription, after the admittance of all applicants with an EHCP which names the school, places are allocated to banded applicants before those who are non-banded.

17. Banded applicants are admitted to each band based on the proportion of places allocated to that band. If there are insufficient applicants in any one band, then places are filled from the other bands as specified in the arrangements:

- "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.”

18. The oversubscription criteria, which are applied to applicants within each band and to non-banded applicants are, in summary:

1. Looked after and previously looked after children.
2. Siblings of students attending the school at the time of admission.
3. Remaining places are offered on the basis of distance, with priority afforded to children living nearest the school.

Consideration of Case

19. The referral raises concerns in respect of the school’s use of pupil banding, which the local authority states has resulted in four groups of children not gaining sufficient places at the school: local children; siblings of current pupils; lower ability children; and children in receipt of free school meals.

20. The arrangements prioritise banded applicants above those who are non-banded; I must be clear that this is not in itself unfair. Where arrangements use pupil banding in accordance with the provisions of paragraph 1.25a of the Code then not only is the prioritisation of banded applicants allowed, but it is a requirement in order to best ensure the intended outcome. That is, if banded applicants were not prioritised it would not be possible to produce an intake that is representative of the full range of ability of applicants for the school.

21. The local authority stated that, for entry to the school in 2023, “517 children applied ... of which 239 did not sit the assessment and were therefore deemed to be non-banded. This amounts to 46% of those who applied for the school. Children who have not sat the assessment have very little chance of gaining a place in the school for 23-24”.

22. I looked at this data in more detail and found that all of those admitted to the school in 2023 were banded applicants and that 174 of the 180 children admitted had the school as their first preference. Table 1 shows these applicants and the bands they were allocated to. I return later to the important point that a banded child is not the same as a child who has sat the assessment. A first preference is the school that a parent most wants their child to attend and is a good indication of demand. I also found that only 13 per cent of the total first preference applications were from non-banded applicants. This is not, perhaps, surprising as it seems likely that those parents who particularly want their child to be admitted to the school will ensure that their child is banded, either by sitting the banding test or through securing a teacher assessment.

Table 1: first preference banded applicants in 2023

	Total applied	Total admitted	Band 1 applied	Band 1 admitted	Band 2 applied	Band 2 admitted	Band 3 applied	Band 3 admitted	Band 4 applied	Band 4 admitted
Total	189	174	34	26	40	36	66	63	49	49

23. I agree with the local authority that non-banded children are unlikely to gain a place at the school; if the school has more banded applicants than there are places then no non-banded applicants will be admitted. As explained above the prioritisation of banded pupils is the very nature of pupil banding; it seems to me that the local authority may not fully appreciate the provisions regarding pupil banding that are within the Code.

24. I will consider the effect of the arrangements on each group of children cited in the referral later in this determination; that is, I will consider whether the arrangements may result in children from these groups being less likely to gain places at the school, and if so whether this is unfair and in contravention of the Code. Before doing so I have found it necessary to consider how the arrangements deal with the banding process itself.

25. As all applicants, whatever their circumstances, are more likely to gain a place at the school if they are banded rather than non-banded the fairness of the banding process and access to it must be examined. I will therefore consider: the clarity of the arrangements for parents, including the approach to banding for children with special educational needs or disabilities (SEND) and other children who may experience difficulties regarding the test; access to the test itself; and whether the use of testing does result in an intake which is representative of the full range of ability of applicants for the school.

26. I will first consider the clarity of the arrangements for parents. The local authority has asserted that parents have “raised concerns that they were not aware of the banding assessment” and said that the local authority has “received feedback from some parents that they were either not aware of the need to register for the assessment or that it was a requirement”.

27. I asked the local authority for any evidence that parents had raised concerns; none was forthcoming. The local authority stated, “Admissions have received feedback from some parents that they have found the fair banding arrangements complex. It is also noted

that some EAL [English as an additional language] families were not aware of the need to sit the assessment. This is anecdotal, however within our borough we have intelligence that many families can find the school application itself a challenge. Through the Appeals process a number of parents also outlined that they were unaware of the need for their child to sit the test. Barnsley has no other schools within it's [sic] demographic that are selective with such a policy so this is completely new territory for many children and families within our locality."

28. I recognise that the school may be unique within its area in having arrangements which are based on pupil banding; this is not a reason why banding may not be used. I have however considered the information available to parents and whether the trust has sought to ensure that parents are aware of the banding assessment and the need to register for it.

29. The main body of the arrangements is contained in a document named "Admissions Policy". This directs readers to a complementary document entitled "Fair Banding Assessment Supplementary Guidance". The school website includes these documents, a link to register for the banding assessment, a sample test and a video which explains the banding approach. I note that the video states that banding is not a form of selection; this is contrary to the definition of pupil banding contained in the Code. The arrangements include an explanation of the banding process and how places are allocated; they state that parents must register for their child to sit the test and provide a deadline for doing so. I find the arrangements to be clear in their explanation of what pupil banding is and how it works in broad terms; there are some points which I address below and under other matters which require the arrangements to be revised in order to provide the clarity required by the Code.

30. I asked the trust for an explanation of how the arrangements, including the fair banding policy, have been explained to prospective and existing parents and when this was done. The trust provided a timeline of actions taken when the use of banding was introduced for the 2023 arrangements; this is shown in table 2 below.

Table 2: Actions taken by the trust to communicate the 2023 arrangements to parents; table provided by the trust

Date	Action
March 2022	Publication of new policy, supplemental guidance and sample assessment paper published on website.
June 2022	Registration form for FB [fair banding] assessment went live on website.
June 2022	FB [fair banding] explanation video posted on school website.

June 2022	Letter to 43 primaries asking 3 things: 1) For them to inform Y5 parents of the arrangements, providing a direct link to the website, video and registration form. 2) Asking if they would be willing for us to administer the assessment in their setting in late September 3) Asking if they would like us to visit and meet with their Y6 parent group in September.
June 2022	Social media posts (FB [Facebook] Twitter)
September 2022	Intense social media campaign on FB[Facebook]/Twitter throughout September
September 2022	Open evening presentations (x3) to parents explaining FB [fair banding] process.
September 2022	Letter to parents who had registered for FBA [fair banding assessment], confirming registration.
September 2022	Communication with primaries to inform them of which pupils in their setting had registered for the FB [fair banding] assessment and asking them to remind those who hadn't.
September 2022	Parental meetings at local partner primaries to explain the process and provide information and answer questions.
October 2022	Intense social media campaign on FB [Facebook]/Twitter throughout October.

31. The trust told me “For admissions in Sept '22 [that is, applications in 2022 for admission in 2023] we wrote out to all existing parents to explain the consultation process and highlight the proposed policy with changes including where siblings sat in the oversubscription criteria. As part of this process, we held a consultation meeting at the school and encouraged our current parents to attend to hear an in-person explanation. We also referred them to the Admissions Policy and subsequent documentation. Furthermore, we made explicitly clear in all social media posts the need to register for the FBA [fair banding assessment] and we know that social media engagement from current parents is high”.

32. The trust also stated “In addition, following the first round of this, as with any new policy and approach, we have reviewed and refined our approach. The changes made for the 2023 round [for admission in 2024] are:

- The June letter to primaries now includes a specific letter for them to send directly to Y5 parents on our behalf.
- In September [2023], when we communicate the list of students to primary schools, we will include a further letter to send to parents of students who have not registered for the FB [fair banding] assessment which encourages them to do so if they wish to apply.

- In June 2023 we have written to parents of all students currently at Trinity Academy St. Edward's (TASE) to remind them of the need to register and sit the FBA if they have any primary-aged children that wish to apply for a place at the school. We have outlined the sibling oversubscription criteria within this communication."

33. I am satisfied that the approaches used by the school to ensure that parents are aware of the banding test and the need to register for it are appropriate. In addition, the school has reflected on and further improved its communication and efforts to reach all current and prospective parents.

34. I will now consider the school's approach to banding for children with SEND and how parents are made aware of this, noting first that the position of children with an EHCP is unique in that if that child's EHCP names the school then they must, under the Code, be admitted to the school. Such children would have no need to sit the banding test and although the arrangements state that they will be allocated to a band via teacher assessment, this allocation has no effect on their admission. That is, children with an EHCP must be admitted to the school whatever band they are allocated to. I am therefore concerned with applicants who do not have an EHCP but who do have SEND.

35. The local authority stated that the independent panel which considers parents' appeals for school places "raised concerns regarding the clarity of the way in which SEND pupils are banded" and that some parents were not aware that they could request teacher-assessed banding (that is, the use of teacher assessment, rather than the test, to assign an applicant to a band). I asked the local authority for any evidence that concerns had been raised by the independent appeal panel; none was forthcoming.

36. The arrangements state, "For children with SEND - At the request of a primary school or parent/carers, additional steps will be taken to ensure reasonable adjustments are made to the assessment or an alternative (more appropriate) assessment is sought."

37. I note that the registration form for the banding assessment includes a section entitled "Support during assessment" which states: "If you think your child may require support during the assessment, please write in the space below the type of support needed. If you are unsure whether this applies to your child, please ask your child's primary school. If not applicable, please leave blank."

38. The trust provided the data in table 3 which shows the number of children with SEND (but without an EHCP) for whom adjustments were sought and how many of these requests were agreed, and how many of these applicants were offered a place for entry into the school in 2023.

Table 3: For entry into the school in 2023, applicants with SEND (non-EHCP) for whom adjustments to the test were sought

	Number of Applicants	Number of Offers
Adjustments provided	16	13

Adjustments refused	1	0
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39. The data in table 3 shows that adjustments to the test were provided for 16 children with SEND and there was only one applicant for whom adjustments were refused. The trust has provided me with detail of the types of adjustments that have and may be used for applicants.

40. I asked the trust how teacher-assessed banding works and they stated: "If a parent or a school felt their child may not be able to access the assessment and professionals felt an alternative was needed, we asked their class teacher to inform us of the band they would allocate them to, based on the level of work they have seen produced by the child at primary school – with an explanation that band 4 was the highest ability and band 1 the lowest... No primary school refused to give a teacher assessed banding and we did not refuse any students who requested this."

41. Data provided by the local authority shows that all first preference applicants for 2023 with SEND were banded and all received offers for the school. It seems clear that adjustments are being provided for most children with SEND when they are sought, and that teacher assessed banding is used for these applicants when requested. The remaining question is whether the arrangements provide sufficient clarity for parents to enable them to seek these provisions.

42. I have found two areas where the arrangements are unclear regarding the approach to banding for children with SEND. The first appears in both the admissions policy and the supplementary guidance. Although these documents include an explanation that for children with SEND reasonable adjustments may be made to the test or an alternative assessment used, this is prefaced by a statement that "Applicants who sit the Fair Banding Assessment will be considered for admission first". This implies that applicants who do sit the test are given priority for admission over those who are banded without sitting the test. This is unclear and is likely to be contrary to the Code. Although, from other evidence presented to me, this priority is not what the trust intends I am concerned with what the arrangements actually provide rather than with intentions. The second area is that the video on the school website which explains the fair banding process makes no mention of either adjustments to the test or the use of teacher assessed banding. I find that the arrangements must be revised regarding this matter.

43. I will now consider those applicants without SEND (and who are not LAC or PLAC) who may require adjustments to the test, or teacher assessed banding.

44. The registration form for the test provides an opportunity for parents to indicate if their child may need additional support and does not limit this to children with SEND or to any other group. However the arrangements do not state, either in the main admissions policy document, the supplementary guidance document or on the school website, that any special provision for children without SEND, or who are not LAC or PLAC, may be made.

45. Data provided by the trust shows that there was only one such applicant for whom adjustments to the test were sought in 2023, and that this request was agreed. I asked the trust whether teacher-assessed banding may be used for applicants who are not LAC or PLAC and who do not have SEND, but who may experience difficulties or anxieties in sitting the test. I also asked how parents would be aware of any provision for these applicants. The trust stated that “This was done only when the teacher and parent felt that sitting an assessment would cause undue anxiety and stress to the child. Parents could indicate if they had any concerns or issues with their child sitting the assessment on the registration form. We then contacted the primary school of any parent asking about this, to check their understanding of the need and issues.”

46. I find that the arrangements do not provide sufficient clarity for parents to enable them to seek adjustments to the test or teacher assessed banding. The arrangements must be revised in order to provide the clarity for parents required by the Code.

47. I will now consider access to the tests themselves. I note that the arrangements allow for the test to be taken either at the child’s primary school, if it is one with which the school works, or at the school itself. Tests take place in October of 2023 for admission to the school in 2024, with an additional session at the school in November 2023 for children who were unable to sit the test in October.

48. The arrangements state: “Students applying to TASE will be invited to sit a non-verbal assessment (based on cognitive ability) produced by a reputable national organisation. Trinity schools work collaboratively with many local primary schools to arrange for their Y6 children to sit the assessment in the familiar surroundings of their own classroom, where children feel more comfortable. Please contact your local primary school to establish if they are working with us. If your child attends a school where the assessment is not administered in-house, you will be informed via email and invited to sit the assessment at Trinity Academy St Edward’s ... 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.”

49. The trust described the testing process in the primary schools which took place for entry into the school in 2023 as follows: “The primary schools who allowed us to administer the assessment at their school were given a date in the two weeks preceding the 7th October. In that week we attended 10 local primaries and ran the assessment in each. At each school, two members of staff from TASE attended. The assessment was administered by us and all equipment and everything needed for the children to take the assessment was provided by TASE. We presented the pre-assessment information as per the guidance from the assessment provider (GL Assessment) ensuring that it was delivered in the same way in each school. The PowerPoint presentation gave step-by-step instructions for all the children, and we went through it step-by-step on the day of their assessment... There were no known barriers to any school hosting the assessment as we provided everything and offered to travel to them. We were flexible on dates and

responsive to questions. We offered numerous times to those primaries who had not responded”.

50. In 2023, 148 children sat the banding test across ten local primary schools. 137 children sat the test at the school. The school has approached five further primary schools with a view to the test being administered at those schools; three refused this and two have not responded.

51. I recognise that the trust has sought to overcome any difficulties parents may experience in accessing the tests for their children by working with primary schools. There have been suggestions made by the trust that the local authority has discouraged primary schools from allowing the tests to be administered at their schools; the local authority refutes this. Whatever the truth of this matter, it seems to me that the most effective way to ensure access to the test for all children in the area would be for all of the local primary schools to host the test for their pupils. Of course, this is not within my control or jurisdiction at all and is not within the sole control of any of the parties to this case.

52. The test session at the school takes place on a Saturday and I asked the trust for an explanation of any arrangements that are in place for children who cannot attend on this day, for example due to religious observance. I also asked whether this information is available to parents. In response the trust stated, “we visit as many of our feeder primary schools as we can (last year it was 10, this year it is 14) that are during the school day, to also help any anxious children or disadvantaged families. If they don't turn up on the day (Saturday) for whatever reason, we then re-email them all and offer a link to sign up for a further session during the week at a later date.”

53. I asked the trust for an explanation of any arrangements that are in place for children who are unable to attend the test session for which they registered, for example due to illness, and whether this information is available to parents. The trust responded, “If they're ill when we visit the primary school, we offer the Saturday. If they're ill or can't make the Saturday for whatever reason, we email them all individually and offer the link and second mid-week date. Last year this was sent to about 60 parents.”

54. I am satisfied that the arrangements make appropriate accommodation for children to sit the test, either at the school or at their own primary school. The registration process for the test is included in the arrangements and the necessary form is clearly linked on the school website. I am satisfied that the trust has processes in place to allow children to attend a test at the school on a day other than a Saturday, and for children who miss their scheduled test date to attend at another time. However, I have not been able to find detail of these two matters in the arrangements and find that the arrangements must be revised to provide the clarity required by the Code.

55. I will now consider whether the arrangements do result in an intake which is representative of those applicants for the school as required by paragraph 1.25a of the Code.

56. Paragraph 1.31 of the Code states: “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.”

57. The arrangements state: “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.”

58. The test in use is one from a well-known supplier; there has been no suggestion made that the test does not comply with the requirements of the Code and my consideration of the arrangements has given me no cause to doubt its compliance. I am satisfied that there is provision for children to be banded via teacher assessment where it is not appropriate for them to sit the test. In my view then, the question of whether the arrangements do result in an intake which is representative of applicants for the school rests on how those applicants are divided into the four bands.

59. I note that the tests are marked externally and the band boundaries (that is, the test scores which fall into each band) are set by the assessment company. The trust stated, “The boundaries of each band are those suggested by GL Assessment – the largest provider of fair banding assessments in England. They reflect national boundaries, and the thresholds are also in line with the thresholds used to categorise students for their Cognitive Abilities Test (CAT test) – which is standardised on 25,000 students...The intention of the policy is to ensure that the cohort of students admitted matches exactly the profile of the students that apply to the school. This is achieved through the process outlined above whereby the number and percentage of places offered in each band mirrors the percentage of applicants that sat the assessment whose score fell within the band.”

60. The trust supplied the band boundaries in use for the 2023 arrangements; these are shown in table 4 below.

Table 4: Band boundaries 2023

Band	Threshold
1	Less than 90
2	90-99
3	100-110
4	Greater than 110

61. The website of GL Assessment states “We work with partners, including King’s College London and the University of York, to ensure that our assessments are the most rigorous, academically sound and in line with current best practice in education. Our assessments are also widely used by the Education Endowment Foundation (EEF) to measure the impact of their intervention research, and they are also used by schools and Governments in over 100 countries worldwide” and, with reference to the test used by the school, “Standardised on 25,000 students and verified every year based on analysis of a quarter of a million students, CAT4 provides you with valuable baselining data with national benchmarks. It also gives reliable indicators for national tests and examinations, including retrospective Key Stage 2 indicators, 9-1 GCSE and A level indicators.”

62. No evidence has been provided to me that the band boundaries are unfair, either as part of the referral or during my subsequent enquiries. The trust does not set these boundaries and has no influence over how they are set. The band boundaries are set on the basis of all applicants who take the test, regardless of their preference for the school, and this is in compliance with the Code.

63. I am satisfied that the arrangements comply with the requirements of the Code regarding the use of pupil banding to result in an intake which is representative of the full range of ability of applicants to the school.

64. I will now consider the four groups of children which the referral states are not gaining sufficient places at the school. That is: local children; siblings of current pupils; lower ability children; and children in receipt of free school meals.

Local children

65. The local authority asserted that:

65.1. “The school was needed to serve the local planning area and our statistics demonstrate local children ... are not gaining places...Along with the offering distance which would have been approximately 1.736 miles If this Fair Banding policy had not been introduced”.

65.2. “The school was required to meet the need for places within the Central planning area. Due to Fair Banding, children outside the planning area are gaining places in the school. This is a cause of frustration as it skews the school place planning function as this uses pupil address data to predict the school they will attend. It also causes additional pressure on the appeals process that are held for other schools...Children outside of the LA [local authority] would have gained a place in the school if they were in Band 4 the highest ability band, this is patently unfair and appears to demonstrate that the school and trust are looking to give priority to highest ability children and being selective.”

65.3. “With the fair banding arrangements in place, more offers are now being made to children outside of the planning area. This will have an impact on sufficiency planning. As children living in the central area are not being offered TASE as their local school, it will inevitably place pressure on other Central area schools and push these children into those schools. Subsequently, the LA will be unable to predict where the children attending TASE will live, which in turn will create difficulties in meeting the LA’s statutory duty for sufficiency of school places.”

66. I will first address the local authority’s point regarding difficulties in school place planning. Planning areas are administrative constructs for local authority planning purposes and parents can apply for schools wherever they wish as suits their situation. The most convenient or desired school for any given family may not be in the planning area which has been assigned by the local authority. To consider that a school’s arrangements must be amended to make a local authority’s role easier in some way would in my view be entirely contrary to the Code. For that reason I will not consider this point any further.

67. The right of parents to apply for any school for their child irrespective of where they live is encapsulated in paragraph 15 of the Code which states, as far as is relevant here: “Parents are able to express a preference for at least three schools. The application can include schools outside the local authority where the child lives: a parent can apply for a place for their child at any state-funded school in any area”. It has also been established in law via what is often referred to as the ‘Greenwich judgment’, that is the case of *Regina v Greenwich London Borough Council, Ex parte Governors of the John Ball Primary School* [(1989) 88 LGR 589], that it would be unlawful for a local authority to give priority in school admissions to its own residents over residents from neighbouring authorities. I do not accept the local authority’s point, therefore, that if children from outside the local authority area gain places at the school this is unfair.

68. I will consider the effect of the introduction of pupil banding on local children; that is, whether it is true that since its introduction local children are not gaining places at the school. Applicants for the school are prioritised on the basis of distance under the third oversubscription criterion, after LAC/PLAC children and siblings of current pupils.

69. In 2021 and 2022 the school was not fully subscribed and so there was no requirement for the oversubscription criteria to be applied. I have used data provided by the local authority and the trust to construct table 5 which shows the number of offers made under the distance criterion for entry into the school in 2023, overall and for each band.

Table 5: the number of offers made under the distance criterion for entry into the school in 2023

	All offers	Band 1	Band 2	Band 3	Band 4
Total offers	180	27	37	65	51
Total number of offers made under distance criterion	128	17	26	41	44

Number of offers on distance up to and including 2 miles	110	17	24	36	33
Number of offers on distance above 2 miles, up to and including 3 miles	15	0	2	5	8
Number of offers made on distance above 3 miles	3	0	0	0	3
Last distance offered		1.392	2.006	2.062	7.42
First distance refused		1.407	2.211	2.082	

70. From the data in table 5 I note that:

70.1. The total number of offers made on distance was 128; this is 71 per cent of all offers.

70.2. The number of offers made on a distance of up to and including two miles was 110. This is 86 per cent of all offers made on distance and 61 per cent of total offers; the vast majority of offers made on distance were for children living up to two miles from the school.

70.3. The number of offers made on a distance of more than two miles was 15. This represents 12 per cent of offers made on distance and eight percent of all offers.

70.4. The number of offers made on a distance of more than three miles was three. This represents two per cent of offers made on distance and less than two percent of all offers.

71. It may be especially useful to note offers made on a distance of more than three miles. This is because Section 444(5) of the Education Act 1996 prescribes statutory walking distance as: “in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles)”. The children offered a place in 2023 who were living more than three miles from the school comprised a very small proportion of applicants.

72. The school has supplied information that for the 2021 cohort the average distance travelled from home to school is 1.5 miles; the pupil living furthest away from the school is a little under 7 miles away and just under a quarter of all pupils live more than two miles from the school. The school also told me that for the 2022 cohort the average distance travelled is 1.6 miles, the pupil living furthest away from the school is, again, a little under 7 miles away and just under a quarter of all pupils live more than two miles from the school.

73. Although it is not possible to make accurate comparisons between the oversubscription data from 2023 and the information provided by the school for the 2021 and 2022 cohorts, broad conclusions may be drawn. The proportion of applicants offered a place on the basis of distance in 2023 who lived more than two miles from the school was

12 per cent; this compares to just under a quarter of pupils in the 2021 and 2022 cohorts who reside more than two miles away. This does not suggest that fewer local children have gained places at the school since fair banding was introduced.

74. The local authority has expressed concern that “In terms of the distance offered, our analysis demonstrates that children who are lower ability living closer to the school have been made fewer offers ... The higher ability Band 4 children have been offered places from further distances. The last place offered to band 4 is 7.4 miles. This is significantly further than the last offered place to Band 1 at 1.392 miles.”

75. This data does show that a lower number of offers on the basis of distance was made to applicants in bands 1 and 2 than those in bands 3 and 4, and that the furthest places offered on distance were to pupils in the highest band as the local authority states. However, the overall number of offers made differed from one band to the next in line with the banding process and therefore the data cannot be interpreted quite as simply as this.

76. It is the ability profile of applicants to the school which determines the number of places in each band. If, as was the case in 2023, there are fewer places in the lower bands this is due solely to a lower proportion of applicants being assigned to these bands via the assessment process. As I have already noted, this will result in there being fewer places offered to children in these bands. I cannot know why the home to school distance is different between the different bands. But I can say that it does not arise from any inherent deficiency or non-compliance with the requirements in the banding regime adopted by the admission authority.

77. The local authority’s assertion is that local, lower ability children are somehow disadvantaged in that they do not receive sufficient places at the school. I examine this in more detail later in this determination when I consider the matter raised in the referral relating to lower ability applicants.

78. For the sake of completeness I asked the local authority how many unsuccessful first preference applicants in 2023 were given an offer at a school more than two miles from their home, and the furthest distance that such an applicant would need to travel. The local authority told me that the number of such applicants was 14, and the furthest any of these would need to travel was 3.193 miles. This is a relatively small number of applicants, some of whom may have been non-banded, and some but not all of whom were given an offer at a school a little over the statutory walking distance from their homes.

79. I do not agree that local children are not gaining places at the school for the following reasons. First, the evidence does not suggest that the geographical spread of the 2023 intake differed from that in previous years. Secondly, the application of the distance criterion in 2023 resulted in the vast majority of these offers being made on a distance up to two miles and all but three offers were within the statutory walking distance; this does not seem unreasonable and does seem to favour local children. Thirdly, I do not find it reasonable to infer from the data that there is a fundamental flaw in the arrangements which skews the intake towards applicants in the higher bands at the expense of local children.

80. It seems to me that children who travel a long way to the school and who therefore may not be regarded as 'local' are the exception rather than the rule. I find that the local authority's focus on the furthest offers made on distance does not present the full picture regarding where successful applicants to the school live, as although the distance of 7.42 miles sounds high it applies to a maximum of three pupils.

81. For the reasons above I do not find that the arrangements have or are likely to result in local children not gaining places at the school or that the arrangements are unfair to local children.

Siblings of current pupils

82. The referral stated: "our statistics demonstrate ...siblings are not gaining places" and that "Siblings not being placed goes against all Barnsley's Admission arrangement [sic] as a locality." The local authority is not the admission authority for the school and arrangements that apply to other local schools are not relevant to my consideration of this case. I have found nothing within the funding agreement for the school that places any responsibilities upon it regarding prioritising siblings for admission. The Code allows admission authorities to prioritise siblings of current or former pupils for admission but there is no requirement to do so.

83. The referrer also noted, "For those siblings whom [sic] were not awarded a place this in turn places undue pressure upon parents who then have children each attending different secondary schools." In the case of primary aged children this could well be the case. However, by secondary age most children are able to exhibit a level of independence regarding getting to and from school and I do not agree with the local authority that the ramifications of having children at different schools is something which the trust should address in its arrangements.

84. I note that the arrangements give the highest priority to siblings that is possible under the Code within arrangements which use pupil banding. That is, banded siblings of current pupils are prioritised after the admission of applicants with an EHCP and banded applicants who are LAC/PLAC.

85. In 2023 there were five first preference non-banded applicants who had a sibling at the school; none of these were admitted. The local authority has provided the information in table 6, which shows first preference banded applicants with a sibling at the school.

Table 6: for 2023, the number of first preference banded applicants who had a sibling at the school

Total applied	Total admitted	Band 1 applied	Band 1 admitted	Band 2 applied	Band 2 admitted	Band 3 applied	Band 3 admitted	Band 4 applied	Band 4 admitted
33	33	1	1	7	7	19	19	6	6

86. I have considered whether, as the local authority states, the data demonstrates that siblings are not gaining places at the school and whether the current arrangements are

likely to result in unfairness for siblings. For entry to the school in 2023 there were 33 first preference banded applicants with a sibling at the school; all of these were admitted.

87. From the evidence presented to me the issue is not that siblings are not gaining places at the school, it is that non-banded applicants are not gaining places at the school. This will always be the result of arrangements which use pupil banding, as discussed earlier in this determination.

88. It remains for me to consider whether the arrangements present any unfairness to applicants with siblings at the school in terms of awareness of and access to the testing process. That is, whether there is any aspect of the arrangements which may prevent siblings of current pupils from being banded and therefore benefitting from the priority afforded to them in the arrangements.

89. I have considered above the action the trust has taken to inform current and prospective parents of the school's arrangements and banding approach and have found that, save for some areas where the arrangements require greater clarity, appropriate steps have been taken in this regard.

90. The referral stated "We have 5 siblings who did not sit the assessment [for entry in 2023] and did not gain places as they were non-banded. We wonder whether the school could have supported these parents to enable them to access the assessment given they have siblings in the school."

91. I asked the referrer how the school should be aware of Y6 siblings of existing pupils, and the referrer responded, "Given that the school currently only has two-year [sic] groups, it would appear that ascertaining whether parents of children already on roll have siblings due to apply, would not pose too big a challenge". In response to my question of what more the school should have done to support the parents of Y6 siblings the referrer suggested, "Communication to all parents of children on roll to ensure that they were aware of the fair banding assessment, especially given that the current cohorts on roll at the school had not had to complete an assessment for entry to the school from the outset."

92. I do not feel able to comment on whether the school should have been aware of five specific siblings of existing pupils but note that the action the school took in June 2023, to write to parents of all current students, would seem to fulfil the wish of the referrer for the school to communicate with parents of all children currently on roll at the school. I am aware that this action was taken after the referral was made but am confident it addresses this part of the referrer's concerns. The referral is in regard to the arrangements for 2024 and the trust has addressed this issue for 2024.

93. I note that the trust has stated, "The Trust would point out two things. The first is that siblings are prioritised in our OS [oversubscription] criteria, precisely to ensure parents do not end up having children attending different secondary schools. Secondly, as our new admissions policy becomes embedded (and pupils have sat the FB [fair banding] assessment to gain entry), the knowledge of it becomes ever more commonplace. We will

endeavour to continue to ensure all current parents/carers (of the first two year groups) are aware of the strong recommendation to sit the FB assessment.” I find it likely that the trust’s approach will result in more siblings gaining places at the school in future years than has been the case to date.

94. All siblings of current pupils who applied to the school as a first preference in 2023 and who were banded gained a place; such applicants have high priority in the oversubscription criteria. I have found no reason why siblings may be treated unfairly regarding the banding process and recognise the steps the trust has taken to explain this process to all current parents. I do not find that the arrangements are unfair to siblings of current pupils.

Lower ability children

95. The local authority has asserted that “Lower ability children [are] being offered the lowest number of places”. Although the local authority has chosen to describe these children as “low ability” it may be helpful to consider them as low attaining. That is, ability may refer to innate potential whereas the pupils in question are those who attain lower scores in the banding assessment or whose attainment is judged via teacher assessment as fitting into the lower bands.

96. The application of the 2023 arrangements resulted in offers of places as shown in table 7 below.

Table 7: offers made for entry into the school in 2023, by band

	Number of Places	Percentage of places	Total Offered
Band 1	27	15	27
Band 2	37	21	37
Band 3	60	33	65
Band 4	56	31	51

97. Due to the application of the banding process, 15 per cent of places were assigned to Band 1 because 15 per cent of banded applicants were assigned to Band 1, and so on. The data shows differences between the number of places available in the top two bands and the number of places offered; this is because Band 4 was undersubscribed and so these places were filled with applicants who had been assigned to Band 3.

98. In response to the local authority’s assertion the trust stated: “The LA seem to be indicating (with no data to support it at all) that the academic profile of the cohort has changed due to the introduction of the admissions policy (and a fair banding assessment). It has not. Prior to its introduction, using CATS tests administered during Y7 (which reflect the same type of questions as the FBA) more than three quarters (78%) of the current Y7 and Y8 i.e. those admitted to the school in 2021 and 2022 – without any FBA, achieved an average KS2 retrospective indicator above 100 (which is the national average). The vast

majority of students fell into the Middle and Highest Attainment bands (just 22% were in the lowest attainment band), which is reflected in the proportion awarded a place in bands 3 and 4 in 2023. The school, since its inception, has attracted an above average (attainment-wise) cohort of pupils (which can be evidenced). “

99. The local authority has not said that the academic profile of admissions to the school has changed nor has it provided any evidence to this effect. The local authority’s concern appears to be solely that there have been fewer places available in the lower bands.

100. It is true that in 2023 there were fewer places available in bands 1 and 2 than in bands 3 and 4. The figures in table 1 also show that there were fewer first preference applicants in band 1 than in any other band. However, this is due to the very nature of pupil banding.

101. The ability profile of those admitted to the school is intended to mirror the ability profile of all applicants. The banding approach in operation uses an average test score of 100. This is not an average of the applicants, it is an average which is set by the external assessment company and as the trust stated the band boundaries “reflect national boundaries, and the thresholds are also in line with the thresholds used to categorise students for their Cognitive Abilities Test ... which is standardised on 25,000 students”. If, say, half of the banded applicants were assigned to the lower bands then half of the places would be assigned to the lower bands. To put it another way, the number of lower attaining children gaining places at the school will increase if more applicants to the school who participate in the banding process are lower attainers.

102. For the reasons above I find that although it is true that lower attaining, or low ability, children did gain the smallest number of places at the school in 2023, this does not contravene the requirements of the Code. Banding has resulted in fewer children admitted to the lower bands; this is as a result of the allowed approach, under the Code, of using pupil banding to select an intake which is representative of all applicants for the school.

Children in receipt of free school meals

103. This part of the referral concerns children in receipt of free school meals (FSM) or who have been in receipt of free school meals at any point during the last six years (FSM6). These factors are regarded as indicators of deprivation.

104. The local authority asserted that “a low intake of free school meals children” is of deep concern and that “TASE are taking a proportion of 18% for FMS students, which is incredibly low when compared with our other local comparable schools. Barnsley Academy, for example, within the same planning area has a FSM percentage of 47% and the same PAN [published admission number] comparator of 180 students.” The local authority has not provided any explanation as to why it chose Barnsley Academy as a comparator to the school rather than any of the other schools in the planning area other than the fact that it has the same PAN as the school.

105. The local authority supplied the data in table 8 to support their assertion.

Table 8: places offered to FSM applicants in Barnsley secondary schools, 2023

School	No. FSM	Total places offered	FSM as a percentage of places offered
Barnsley Academy	84	180	47
Darton Academy	46	240	19
Holy Trinity Catholic and Church of England School	68	140	49
Horizon Community College	99	400	25
Kirk Balk Academy	64	270	24
Netherwood Academy	106	288	37
Outwood Academy Carlton	98	250	39
Outwood Academy Shafton	124	300	41
Penistone Grammar School	41	320	13
The Dearne Academy	105	226	46
Trinity Academy St Edwards	32	180	18

106. In 2023 all FSM/FSM6 first preference applicants were offered a place at the school as shown in table 9 below. It is clearly not the case that these applicants are unsuccessful in gaining places at the school; indeed, the proportion gaining places has increased since banding was introduced. I agree that table 8 shows that the school admitted a lower proportion of FSM children than most other schools within the local authority area. That being said, comparisons between schools rest on many factors.

107. I have looked in some detail at the schools in the table above and noted the following points which perhaps demonstrate the complexity of comparisons between schools:

107.1. The schools in the table range from being less than a mile from the school to over seven miles away.

107.2. The Index of Multiple Deprivation (IMD) is the official measure of relative deprivation in England and ranks every small area from 1 (most deprived area) to 32,844 (least deprived area). The schools in the table are situated in areas which were ranked (in 2019, the latest available data) from 1,911 to 27,816; this is a wide range of deprivation.

107.3. The school is ranked as 6,051 in the IMD; Barnsley Academy, which the local authority has cited in its comparison to the school, is ranked 1,477. That is, Barnsley Academy is situated in an area of greater deprivation than the school

and therefore it may be sensible to expect that the proportion of FSM/FSM6 children would be higher.

108. In an attempt to draw more accurate comparisons I examined FSM/FSM6 data for schools in the planning area, as shown in table 9. There are three other schools in the planning area to which the school belongs; GIAS shows that Horizon Community College is 1.01 miles from the school, Barnsley Academy 1.72 miles and Darton Academy 3.34 miles. I asked the local authority to provide figures for each of these schools showing the total number of pupils on roll and the number who were FSM/FSM6 as recorded in the October census in both 2021 and 2022 in order to provide comparative data over time. The local authority did not supply this information.

Table 9: number of first preference applicants and offers made in 2021, 2022 and 2023, for children who are FSM/FSM6, for the schools in the planning area

FSM/FSM 6 applicants planning area schools	Applicants 2021	Offers 2021	Per cent 2021	Applicants 2022	Offers 2022	Perc cent 2022	Applicants 2023	Offers 2023	Per cent 2023
Trinity St Edwards	31	29	94	35	33	94	31	31	100
Horizon Community College	94	89	95	111	97	87	76	74	97
Barnsley Academy	77	76	99	79	68	86	76	71	93
Darton Academy	32	31	97	40	37	93	35	35	100

109. The trust noted that, in relation to the three other schools in the planning area, “the number of pupils with FSM/FSM6 both applying to the schools (203 in 2021 compared to 187 in 2023), as well as being offered a place at the schools (196 in 2021 compared to 180 in 2023), has remained broadly similar (although slightly lower). This data directly refutes the LA’s position that TASE’s policy is forcing additional, local FSM/FSM6 pupils into neighbouring schools.”

110. I note that the school compares well to its planning area neighbours in terms of the percentage of first preference FSM/FSM6 applicants who were offered a place in 2023. The concern of the local authority seems to be that the school ‘should’ admit more FSM children; that is, that the demographics of the area are such that a greater proportion of offers for admission should be made to these pupils. No evidence has been provided to this effect save for a comparison with Barnsley Academy and it is not clear that a direct comparison can be made between the two schools.

111. The main barrier to any child gaining a place at the school would be if they were non-banded. I have already considered the banding process overall; I am satisfied that this is in accordance with the Code and that the trust has taken appropriate action to draw the banding process to the attention of parents. It remains for me to consider whether there are any aspects of this process that are unfair to FSM/FSM6 applicants specifically.

112. The local authority stated, “The LA has expressed concern over children from disadvantaged families and their ability to take the test from a logistics point of view (i.e. getting to TASE on a Saturday to take the test).” No evidence has been provided to this effect. In my view the actions the trust has taken to administer the banding test in local primary schools is the best way to counter the local authority’s concerns around logistics for some families.

113. The number of first preference FSM/FSM6 children admitted to the school has not fallen significantly since pupil banding was introduced and the proportion of such successful applicants has increased. No evidence has been presented to me that the school should have a higher intake of FSM/FSM 6 children, or that these children or their parents may be placed at a disadvantage regarding understanding of and access to the banding process. I find that the arrangements do not result in any unfairness to FSM/FSM6 applicants.

Other Matters

114. In looking at the arrangements, it would appear to me that the following matters also do not conform with the relevant legal requirements. Paragraph 14 of the Code requires that arrangements must be clear for parents on how places are allocated. The issues listed below apply to that paragraph of the Code unless otherwise specified.

115. Under the heading “Admission numbers(s)” the arrangements state: “The school has an admission number of 180 for entry in year 7. The school will accordingly admit this number of students if there are sufficient applications. Where fewer applicants than the published admission number(s) for the relevant year group [my underlining for emphasis] are received, the Academy Trust will offer places at the school to all those who have applied.”

116. The term “relevant year group” is used in paragraph 1.2 of the Code, in stating that the Published Admission Number (PAN) only relates to the relevant age group. Footnote 11 of the Code defines this as: “[...] the age group at which pupils are or will normally be admitted to the school e.g. reception, year 7 and year 12 where the school admits external applicants to the sixth form”. The wording of the arrangements may prove confusing for parents in that it is not clear that the relevant year group is Y7. This confusion may be heightened by the use of a plural in “published admission number(s)” when there is only one PAN for this school.

117. The section of the arrangements titled “Timeline of the application process” includes the relevant months for the different stages of the application process but not the year, which is likely to be unclear to parents.

118. The oversubscription criteria are not numbered, which may mean that the order of prioritisation is not clear for parents. I have interpreted there to be three criteria: looked after and previously looked after children; siblings; and distance to the school from the home address. In respect of the first oversubscription criterion, that is looked after children and previously looked after children:

- a) the definition of these children in the arrangements is not the same as that in paragraph 1.7 of the Code which renders the criterion unclear;
- b) the definitions of looked after and perilously looked after children set out in the arrangements are labelled a-c, which may imply a level of hierarchy not in accordance with the Code;
- c) paragraph 1.7 of the Code requires that the definition of looked after and 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 care as a result of being adopted”. This group of children is included in the arrangements, but the layout of the criterion is such that it may not be clear that these children are afforded equal priority to other looked after or previously looked after children;
- d) I have been unable to find the “explanatory note 13.1” referred to in this criterion and therefore parents would not be able to, thereby rendering the arrangements unclear; and
- e) The document “Fair Banding Assessment Supplementary Guidance”, which forms part of the arrangements, states that applicants who choose not to sit the test will be ranked in order of priority after all banded applicants. In doing so the arrangements do not make it clear that looked after and previously looked after children do not have to take the banding test and will have priority above all other applicants (other than those with an EHCP which names the school).

119. The third oversubscription criterion deals with distance to the school from an applicant’s home address. A note on the final page of the arrangements “Note 1”, deals with how home address will be determined in the event of shared parental responsibility, stating: “Where responsibility for a child is shared evenly, the person receiving Child Benefit is deemed to be the person responsible for completing application forms, and whose address will be used for admissions purposes”. The use of child benefit is not a reliable indicator of where a child actually lives for most of the time from Monday to Friday during school terms. Its use with no scope for other indicators to be used to establish the address of a child of parents who do not live together is likely to be found to be unreasonable and unfair and not compliant with the Code.

120. In response to the above point the trust told me that “we will refer to the LA on this one and use the same system as is used across the borough. Therefore, if there is an issue with this it would be an LA-wide issue and we will work to resolve this with partners”. I note that it is the responsibility of the admission authority to ensure that this matter is addressed within their own arrangements and that they must do so within the timescale specified in this determination.

121. In respect of the section headed “Waiting lists”, parents are not expected to, as the arrangements state, “ask for” their child to be placed on a school’s waiting list. However, it is permissible for the school to ask parents to confirm if they wish their child(ren) to stay on the waiting list. Paragraph 2.15 of the Code states that a waiting list must be maintained until at least 31 December of each school year following admission. This is not clear in the

arrangements, which say “a waiting list will operate until the end of the first term after the beginning of the school year”. Parents may understand from this that the final day on which the school is open to pupils will be the final day on which the waiting list will remain in place.

122. Paragraph 2.26 of the Code requires admission authorities to publish how in-year applications will be dealt with. I have been unable to find this information in the arrangements and therefore the arrangements are not likely to be compliant with requirements in this regard.

123. I note that the trust has recognised that the arrangements would benefit from greater clarity regarding the points raised above and have expressed their commitment to improving the arrangements in the light of this.

Conclusion and summary of findings

124. I find that the use of pupil banding as in the arrangements is permissible and is fair under the Act and the Code.

125. All admission arrangements advantage some applicants over others; this is because all arrangements must contain oversubscription criteria which prioritise certain applicants in the event of oversubscription. In order for the arrangements to be unfair, the disadvantage must also be unfair. I have considered whether any particular group may be unfairly disadvantaged by the banding arrangements and have not found any unfair disadvantage.

126. There has been no suggestion made by any party that unsuccessful applicants to the school are unable to find a place at an alternative school, or that they would have to travel an unreasonable distance from their home to an alternative school. I have found no evidence of this in the course of my consideration of this case.

127. The arrangements prioritise applicants who have been banded; this is allowed under the Code and is not unfair. Unfairness may occur if certain applicants, or groups of applicants, are prevented or discouraged from accessing the banding process; I do not find any unfairness in this regard.

128. The action the trust has taken to administer the banding test in local primary schools seeks to make access to the banding process as simple as possible for local children and their parents and to ensure that as many local children as possible sit the test.

129. Although it is not the role of the schools adjudicator to prescribe how arrangements are applied, it seems to me the best approach the local authority could take to address its concerns would be to encourage participation in the banding process, for example by encouraging more primary schools in its area to host testing for their pupils.

130. I have found a number of other issues with the arrangements which I have detailed in this determination. The trust has said it will address them and it must do so in the timescale set out in this determination.

131. This determination will be published as the national closing date for secondary school applications approaches. In my view, expecting the school to change its arrangements at such a late stage in the admissions process for 2024 would be disproportionate to the matters concerned and may cause unnecessary confusion. I therefore determine that the arrangements must be revised by 28 February 2024.

Determination

132. I have considered the admission arrangements for September 2024 determined by Trinity Multi Academy trust for Trinity Academy St Edwards, Barnsley, in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to the school's use of pupil ability banding as a form of selection, the arrangements conform with the requirements. I have also found that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

132. 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 arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 28 February 2024.

Dated: 31 October 2023

Signed:

Schools Adjudicator: Jennifer Gamble