



Office of the Schools Adjudicator

Determination

Case reference: **ADA4352**

Objector: **London Borough of Bromley**

Admission authority: **Harris Federation for Harris Academy, Orpington**

Date of decision: **29 July 2024**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2025 determined by the governing body for Harris Academy, Orpington in the London Borough of Bromley.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements by 31 August 2024.

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 the London Borough of Bromley (the objector, the LA) about the admission arrangements (the arrangements) for Harris Academy, Orpington (the school), a non-selective, co-educational secondary school for children aged 11-18, for September 2025. The school is a member of Harris Federation (the trust). The objection is to:

- a) the reduction in the published admission number (PAN) for Year 7(Y7) from 180 to 120 and

b) the introduction of banding to the admission arrangements

2. The local authority (LA) for the area in which the school is located is the London Borough of Bromley. The LA is a party to this objection. Other parties to the objection are the trust and the school.

Jurisdiction

3. The terms of the Academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to foundation and voluntary aided schools, and with equalities law. The Harris Federation Trust Board is the admissions authority for the school but has delegated the determination of admission arrangements at the school to the governing body. The governing body has further delegated this function to an admissions committee. These arrangements were determined by the school's governing body, on that basis, on 20 February 2024. The objector submitted their objection to these determined arrangements on 13 May 2024. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. a copy of the minutes of the meeting of the governing body at which the arrangements were determined;
- b. a copy of the minutes of the meeting at which the governing body discussed the rationale for the changes to the arrangements for 2025;
- c. a copy of the admissions report referred to in the minutes of the meeting of 20 February which includes responses to the consultation;
- d. a copy of the determined arrangements, which include the supplementary information form;
- e. the objector's form of objection dated 13 May 2024 and supporting documents plus further documents provided upon request;
- f. the school's response to the objection and supporting documents;
- g. the London Borough of Bromley's School Place Planning Report 2022-2026;
- h. the Bromley Children and Young Person Joint Strategic Needs Assessment 2022;

- i. Education School Places Commissioning Plan 2023; and
- j. information available on the school, trust, local authority and DfE websites including GIAS (get information about schools)

The Objection

6. There are two elements to the objection. The first is to the reduction of the PAN for Y7 at the school for September 2025 from 180 to 120, on the grounds that the reduction does not align with the local authority's school place planning strategy and that it would "have a detrimental impact on parental preference and the opportunity for children to attend a local school."

7. The second is to the school's introduction of banding for September 2025, specifically to the introduction of a banding test. The objector argues that this is not "a logical change to make when the school has been undersubscribed in recent years".

Other Matters

8. The following matters do not conform with the requirements of the Code:

9. In paragraph 7.1.1 of the arrangements there is no reference to children who appear to have been in state care outside of England and ceased to be in state care as a result of being adopted (paragraph 1.7 of the Code and note 16 pertaining to that paragraph).

10. The sentence in point four of paragraph 7.1.4 of the arrangements which states "For the avoidance of doubt, or a step-child or a child of a cohabiting partner" does not make sense. Presumably it should read "neither a step-child nor a child of a cohabiting partner who lives elsewhere, will be eligible for a place under this category".

11. At paragraph 15.10 there is no text.

Background

12. The school is an 11-18, non-selective, mixed secondary school with a sixth form. It joined the Harris Federation (a multi-academy trust) on 1 September 2016 and was judged to be Good at its last Ofsted inspection in May 2023. The net capacity for the school is not available on GIAS but the number on roll is recorded as 609 with almost 50% of pupils being eligible for free school meals, significantly above both the borough and national average. The school is undersubscribed in every year group from Year 7(Y7) to Year 11 (Y11).

13. The trust board is the admission authority for all schools within the multi-academy trust. It has delegated the determination of admission arrangements to the governing body of the school, and they have delegated the determination and implementation of admission arrangements to an admissions committee.

14. The oversubscription criteria for the school for 2025 are as follows (in summary):

- Looked after and previously looked after children.
- Children with a sibling at the Academy in Years 7 to 11.
- Children attending Harris Primary Academy, Orpington.
- Children of staff members employed at Harris Academy, Orpington.
- All other children.

The tie breaker for all year groups is distance from the child's home address to the academy, with those living nearest receiving highest priority.

15. The LA currently operates a single planning area across the borough for secondary schools. It has divided the borough into six planning areas for primary schools.

Consideration of Case

16. I shall now look at the two strands of the objection in order as set out above in 1a) and 1b), examining first the objection to the reduction in PAN from 180 to 120 for September 2025.

17. The governing body consulted on the 2025-2026 admissions arrangements between 19 December 2023 and 30 January 2024. The rationale for the changes being objected to was discussed in the governing body meeting in November 2023, prior to the consultation. The reasons for the proposed reduction in the PAN were set out subsequently in the consultation report and I include them here as they provide a useful summary of the rationale. I have paraphrased as the issues are addressed at length in the school's reply to my jurisdiction and further information letter. In outline, the reasons stated for the reduction in PAN are:

- The PAN of 180 is having a detrimental impact on the academy's ability to allocate resources in an efficient and effective way.
- The difference between the number of places offered and children admitted over the last 5 years has been at least 70 children per year.
- With a PAN of 180, the school has to plan for a 6 class structure with 30 children per class. If 100 or fewer children actually start at the school, then only 4 classes will be needed.
- The combination of having to plan a curriculum for 180 children when less than 100 are present alongside the delay in funding arriving for children (funding is based on the previous year's October census) is causing a significant financial challenge.

- The financial difficulties are exacerbated by the high number of children arriving with undiagnosed and unfunded high needs. The school has had to apply for 80 Education, Health and Care Plans (EHCPs) in the last 4 years. The process of obtaining an EHCP and funding takes a minimum of 20 weeks (on occasions more than a year) during which the school has to provide the support each child needs without the funding to do so. This leaves fewer resources for the other children.
- The surplus places at the school in Y7 enable the LA to direct additional children to the school throughout the academic year, exacerbating the challenges around class planning and funding.
- The reduction in the PAN would provide certainty on the number of classes and teachers required, enable consistent curriculum planning and address the budgetary difficulties.

18. In the minutes of the meeting of 20 February 2024, at which the governing body considered the responses received about the consultation, it was stated that the consultation took place with schools within a ten mile radius, which is more than required by paragraph 1.47 of the Code, which says that consultation must take place with “all other admission authorities within the relevant area”. The school has provided evidence of the breadth of the consultation, and I am satisfied that it met all of the requirements of the Code. The consultation included a poster and a letter which were sent to all those consulted setting out the specific changes proposed for the 2025-2026 arrangements. In relation to the points raised in this objection, the letter stated;

“Section 5: Published Admission Numbers (PANs)

5.1 Proposal to reduce Harris Academy Orpington’s Year 7 Published Admission Number (PAN) from 180 to 120.

Section 6: Inclusion of a Banding Test

Banding is used by secondary schools to ensure the admission of a proportionate spread of children of different abilities (according to the national average) at their normal point of entry. It is not designed to enable the selection of high ability pupils, as is the case with grammar schools.

All parents who name Harris Academy Orpington on the Common Application Form (CAF) will be automatically invited to sit our admissions test to determine which ability band their child falls into. The test will be a non-verbal reasoning test, which will be standardised against the national distribution of abilities. Students will be invited in for a December testing date.

It will be vital that all children complete a banding test: if your child is not able to attend then they will automatically be placed into the Untested band.”

19. The local authority responded to the consultation on 5 January 2024. In relation to the PAN reduction, that response stated:

“The Council objects to the proposed change as it does not align to its school places strategy which currently seeks no reduction in PAN in the planning area within the single secondary Pupil Place Planning Area within which Harris Academy Orpington is located, and because it would have a detrimental impact on parental preference and the opportunity for children to attend a local school.

The supply of secondary places and need is closely matched in Bromley and the increase in primary places during the past decade is now passing through the secondary sector. Based on the base Year 7 PAN in Bromley (3,000) there is currently only 70 net surplus places (2%) according to the Autumn 2023 School Census.

Whilst the Council is aware of falling rolls at Harris Academy Orpington, this situation is contrary to the situation across the Planning Area where most secondary schools are operating at PAN or are over capacity. Other local secondary schools cannot continue to admit over PAN indefinitely without physical expansion and the recent cancellation of the proposed Harris Kent House Free School has worsened this situation. The surplus capacity available at both Harris Academy Orpington and Kemnal Technology College has meant that for several years the Council has not received any Basic Need allocation to expand other schools.

We also note, from the latest census data available to the Council (as of October 2023) that Harris Academy Orpington’s pupil number are:

Year Group	Number on Roll
Year 7	98
Year 8	82
Year 9	87
Year 10	73
Year 11	123

The Council recognises that this shows less than 120 in all year groups except year 11, but the removal of 60 places from the system would have a significant impact on the Council ability to ensure that there is sufficient contingency available. It is noted that, as the school administers their own in-year admissions, the Council have not been advised of the maximum intake capacity available in all year groups.

It is also noted from the Council's admissions records that the number of preferences expressed as part of the co-ordinated admission process over the last few years has been in excess of 120 and the number of places offered on the relevant offer day has been above 120:

Admission Year	Total number of preferences expressed	Total number of places offered on relevant national offer day
2024	211	Not yet offered
2023	175	148 (including LA allocations)
2022	153	168 (including LA allocations)
2021	166	130 (including LA allocations)

It is noted that the school have received more preferences for the 2024 admissions year than in previous years.

As stated, the proposed reduction in PAN is contrary to the recommendations of Bromley's Education School Places Commissioning Plan 2023 that seek no reduction in secondary places. Furthermore, the Council's policy includes that a pupil place planning target of a 5% surplus is used as contingency against local fluctuations of need and to ensure that there is a choice of types of school places available."

20. I note that another school within the local authority also responded to the consultation, objecting to the proposed reduction in PAN. The concern was whether local demand for places could still be met with the reduction of available places and that the reduction could cause additional pressure to other local schools which are already oversubscribed, leading to an increase in appeals.

21. The minutes show that the governing body discussed these responses and the decision as to whether to proceed with the reduction in PAN from 180 to 120 in depth at their meeting of 20 February, before determining the arrangements for 2025 with the PAN reduction included.

22. In its objection, the local authority reiterates the comments that it made in its consultation response of 5 January 2024 and adds:

"The preference information for the school's Year 7 intake for the last 4 years (including 2024) demonstrates an increase year on year in the number of preferences being expressed by families for the school. For 2024 admissions, the school received 36 more on-time preferences than for the previous year.

The corresponding offer day figures show that the school has received more than the 120 offers for the last four years (including 144 for 2024 admissions), which includes Local Authority Allocations (non-preference offers) where the school is the nearest school with a vacancy.

Historically the next nearest school to the Harris Academy Orpington area with vacancies is over 2.5 miles away (measuring in a straight line). The furthest distance of a child receiving a Local Authority Allocation of Harris Academy Orpington on 1 March 2024 was less than 2 miles.”

23. The school provided a detailed response to my jurisdiction and further information letter, and I set out below the key paragraphs relating to the PAN reduction:

“In 2019, Kemnal Technology College....began to admit girls. This was a key factor in the significant fall in numbers that joined Harris Academy Orpington in September of that year, who are now in Year 10. Numbers on roll are as follows:

Year Group	Number on Roll
7	107
8	87
9	89
10	75
11	125

As the academy is GAG [General Annual Grant] funded, this fall in student numbers has had a significant effect on our ability to maintain a balanced budget. This meant that Harris Academy Orpington has been operating at a deficit budget since 2020. This deficit has continued to increase over recent years, and without structural change will continue to increase in the future. This means that the current situation prejudices the efficient provision of education to students and the efficient use of resources. This is a disproportionately high drain on the notional budget which not only has an effect on students who are disadvantaged and/or SEND but also those who are not.... Reducing the PAN and introducing a Banding Test are significant factors in ensuring that the Academy can begin to move towards a viable budget position, whilst continuing to provide a high-quality education for students....

Budget constraints at the Academy are also impacted by the fact that the Academy serves a very disadvantaged community. Proportions of student who are Free School Meals and/or disadvantaged, and/or are SEND, is significantly above the national averages:

	Disadvantaged (%)	Free School Meals (%)	Send K (%)	SEND EHCP (%)
7	59.8	52.3	29	4.7
8	64.4	54	23	6.9
9	53.9	49.4	25.7	7.9
10	56	54.7	18.7	5.3
11	51.2	44.8	20.8	8.8
Overall	51.7	46.2	18.6	5.6

Additionally, each year students have joined the Academy in Year 7 with significant needs, but without a formal diagnosis of SEND, which then needs sufficient funding to access the curriculum. Given these high levels of need, the Academy has always sought to provide any additional support whilst applying for EHCP funding. The fact that the Local Authority has repeatedly not met its statutory obligations, only serves to make this worse. This year, Harris Academy Orpington had 21 students who joined in Year 7 who need an EHCP and do not have one. This is eight times the national average and initial information gathering suggests that the incoming cohort for 2024-5 presents more extensive needs.

Whilst the Academy has a moral purpose to support these students, the consequence is that resources to support the wider academy population is limited, meaning constraints on important areas such as enrichment for students from very disadvantaged backgrounds. This is an important reason for reducing the PAN as a reduction would make it easier to ensure that we can maintain an efficient use of resources for the students we have on roll.”

24. The table below sets out the difference in the number of students offered a place and those who actually take that place up (based on information provided by the school):

Year Group	Number of places offered	Number on roll in September (census)	Difference
7	175	107	-68 (3 classes)
8	153	98	-55 (2 classes)
9	166	89	-77 (3 classes)
10	168	89	-79 (3 classes)
11		125	
Number of excess teachers			11 (c£550k)”

(approximate costs)			
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25. The Bromley Children and Young Person Joint Strategic Needs Assessment 2022 makes, in summary, the following statements:

- The only population growth forecast is in the secondary school age group but this is also expected to fall by 2032
- The population distribution for 1-19 year olds varies significantly across the wards within Bromley
- There is no longer net migration of pupils into Bromley (since 2019)
- There has been a 47% increase in the number of children in Bromley with an EHCP since 2019

26. The LA's 'Education School Places Commissioning Plan 2023' makes the following statements:

- "What school rolls do indicate is a shift in need locally. The Council has experienced difficulty providing places for children in north-west Bromley, whilst concurrently there remain significant surplus places at a minority of schools in the east of the borough. Except for 2 schools in the east of the borough, all Bromley secondary school are operating close to or above capacity and directing a child from Penge to an Orpington school is often not a 'reasonable' travel offer.
- The Council is working with the DfE on delivering proposals to separate the Borough into 2 planning areas that better represent travel to learn characteristics.
- If Bromley's proposed amendments to planning area are accepted Harris Primary Academy Orpington will move in Planning Area 7 and Pratts Bottom Primary School will move to Planning Area 9. For secondary place planning purposes, the whole planning area is proposed to be in secondary planning area 2.
- 15% of pupils in Orpington are eligible for free school meals locally which is close to the Bromley average. Both Blenheim Primary School and Harris Primary Academy Orpington at 37% significantly exceed the Bromley average.
- Following the recommendations of the School Place Working Group in 2022 to review the Borough's planning areas, ratified by the Children Education and Families Portfolio Holder in September 2022, the Council is in conversation

with the Department for Education about amending its planning areas. There are 2 key proposals:

1. To split Bromley into 2 planning areas for secondary place planning purposes
2. To amend the current planning areas so that they are co-terminus with ward boundaries

- Proposed Secondary Planning Areas

Currently Bromley is a single planning area for secondary place planning purposes. Over the past 10 years a situation has developed whereby secondary schools in the west of the borough are over capacity, whilst a number of schools in the east of the borough have reduced their capacities and there continue to be vacancies in these schools. The journeys required for many children and young people resident in the west of the Borough to access these vacant places in east of the Borough means that they cannot be reached within a reasonable time as set out in the DfE's Home to school travel and transport guidance - Statutory guidance for local authorities.

Having a single secondary planning area is also disadvantaging the Council in remedying this issue. When the DfE is calculating the Council's Basic Need allocation it is offsetting the shortage of places in west of the borough against the surplus places in the extreme east of the borough.

By creating 2 planning areas the Council is considered to be more likely to receive funding to deal with the shortage in the west of the borough. This has proved to be a significant issue whilst the Council awaits the DfE's delivery of Harris Kent House, the free school proposed for Penge, approved in 2017, but unlikely to open until 2025 at the earliest.

When comparing Year 7 places and Published Admission Numbers, the Council is currently operating at 98% of capacity boroughwide, which is less than its planning target of a 5% surplus. This problem is more acute in the west of the borough where schools are currently operating at 104% of capacity, with individual schools between 99% and 121% of capacity. In recent years the Council has only been able to make offers to every applicant by Bromley schools temporarily increasing their PAN, offering places over their agreed PAN, or by offering places in other boroughs, sometimes in poorer performing schools. There is insufficient capacity in the school premises in the borough to operate in this manner indefinitely.

To resolve this issue a proposal is being discussed to split the secondary planning area into two new planning areas of East and West: Secondary Planning Area 1 (West) Secondary Planning Area 2 (East) Under the proposal, Secondary Planning Area 1 would include schools in the west of the borough and central Bromley, whilst Secondary Planning Area 2 would include Orpington and

Biggin Hill. The new planning areas would be co-terminus with ward boundaries, but would split Primary Planning Area 6, With Bromley Common and Holwood ward being in Secondary Planning Area 1 and Farnborough and Crofton Ward and Petts Wood and Knoll Ward being in Secondary Planning Area 2.”

27. Having reviewed all of the documents above and taken into account the information provided by the LA in its objection and by the school in response, I have reached the conclusions set out below.

28. The LA is seeking to maintain its stated desire to have five percent surplus places available to provide flexibility and support parental preferences across its secondary estate. Its use of a single secondary school place planning area covering the whole borough does not provide for the significant difference in the demand for places between, for example, the northwest of the borough and the east of the borough, where the school is situated. The LA are clearly aware of this as they are seeking a change to the planning areas to address the differences.

29. The data shows that the primary population in the areas served by the school is falling and forecast to continue to fall.

30. The school finds itself in the situation, year on year, such that the LA offers a much higher number of places at the school than are taken up. This results in substantial and material difficulties for the school in terms of class, curriculum, staffing and financial planning.

31. The LA documents state that its single biggest challenge is the management of the very high increase in the number of children with EHCPs. The school is finding a high proportion of children arriving in Y7 with undiagnosed and unfunded needs, for example having to apply for 21 EHCPs for the 2023/24 Y7 cohort alone. The resources needed by the school to meet both the needs of these children and of the rest of the children in the cohort exacerbates the difficulty in financial planning and the efficient use of resources. The current surplus places in Y7 mean that the LA can direct further children to the school, some of whom have additional needs but not the funding to support them. This further exacerbates the challenges as stated above.

32. Given the free school meal profile of the primary schools that feed into the school, the number of disadvantaged children arriving at the school in Y7 exceeds the percentage at those local primaries, with 52 percent of the current Y7 eligible for free school meals. Therefore, the need to reallocate additional resources to children needing, but not funded for, EHCPs is especially difficult to manage without negatively impacting on other vulnerable children.

33. The reduction in the PAN to 120 would enable the school to plan its class structure, staffing and curriculum with certainty. Due to the low numbers of children actually starting Y7, as opposed to the number offered places at the school by the LA, the disproportionate number of children requiring EHCPs and other support and the lag in funding, the school is

running a significant and unsustainable deficit budget. Without the PAN reduction and the certainty this affords, it is difficult to see how the situation can be managed.

34. The school has indicated to me that it would be prepared to consider creating a 'bulge' class and admit an additional 30 pupils if the LA so requested as "it would mean that we could accurately build and staff a timetable for students that we know would come." This indicates to me that the school is willing to be flexible within the necessary parameters that it has put in place in order to address its resourcing, educational and financial challenges.

35. I find that it is not reasonable for the LA to expect the school to retain a PAN of 180 for the purpose of enabling the LA to keep its desired five percent surplus of places. Their argument that the places are needed to support parental preference is not supported by the evidence provided, as the school is undersubscribed and a high number of parents whose child is offered a place at the school choose not to take it up. The LA's own documents state that the area of highest demand and need for secondary places is in the north-west of the borough but that they cannot reasonably offer the school as an alternative because of the distance and travel time for children. Whilst I understand the LA's challenges in ensuring that it meets its statutory duty to ensure a sufficiency of school places, it is not reasonable to achieve this at such a high and unsustainable cost to the school both financially and in terms of the impact on the children at the school.

36. I do not uphold this element of the objection to the reduction of the PAN from 180 to 120.

37. The second element of the objection is to the school's introduction of banding into its arrangements and to the banding test in particular.

38. The arrangements for 2025 say:

"6.2 Banding is used by secondary schools to ensure the admission of a proportionate spread of children of different abilities (according to the national average) at their normal point of entry. It is not designed to enable the selection of high ability pupils, as is the case with grammar schools.

6.3 In summary, all children for whom a place is sought in year 7 (including looked after and previously looked after children and children with an EHC plan) will take a non-verbal reasoning test which will be standardised against the national distribution of abilities.

6.4 The test has no pass or fail mark. When the results are known, all of the children will be placed in rank order according to their mark, and will then be allocated to one of nine groups (known as 'bands') ranging from highest to lowest ability. The number of places allocated to each band is determined by the national distribution of abilities, by applying national percentages in each band to the number of places available within the published admission number. This essentially means that there will be more places available in the middle bands than in the outer bands where the highest and lowest ability bands are.

6.5 Once all children have been placed in their applicable band, places will be allocated to children in each band by applying the criteria in this policy. Children with an EHC plan will be allocated their places first, and then the oversubscription criteria set out in this policy will be applied to each band, using the tie breaker where necessary.

6.7 Full details about the banding process and tests, including the dates that the tests are scheduled and how standardisation works, will be published alongside this policy and all other admission related documents on the Academy's website."

39. At paragraph 1.25, the Code says:

"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."

40. The Code goes on to say at paragraphs 1.26, 1.27, 1.28 and 1.30:

"1.26 Admission authorities' entry requirements for banding **must** be fair, clear, and objective. Banding arrangements which favour high ability children that have been continuously used since the 1997/98 school year may continue but **must not** be introduced by any other school.

1.27 The admission authority **must** publish the admission requirements and the process for such banding and decisions, including details of any tests that will be used to band children according to ability.

1.28 Where the school is oversubscribed:

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

1.30 Children with Education, Health and Care Plans may be included in banding tests and allocated places in the appropriate bands but, regardless of any banding arrangements, they **must** be allocated a place if their Education, Health and Care Plan names the school."

41. In its objection, the local authority wrote:

“...the Council does not feel it is a logical change to make when the school has been undersubscribed in recent years. A Banding Test could be seen by parents/carers as a barrier to them applying for admission. It is the Council view that there is no added value to the school in increase [sic] preference numbers or helping to attract more pupils.

It is noted that the other two Harris federation secondary schools in the Bromley area (Harris Academy Beckenham and Harris Girls’ Academy Bromley) both operate a Banding Test, but these schools are traditionally significantly oversubscribed.”

42. In their response to my jurisdiction and further information letter, the school wrote:

“The introduction of a Banding Test is intended to ensure that the ability range of students who join the Academy more accurately represents the national ability range. The Academy has disproportionately high levels of need, which makes it difficult to make efficient use of resources. The high levels of deprivation and SEND mean that there is a lack of equity across the borough with some schools having greater levels of need.”

The executive principal also leads Harris Girls’ Academy Bromley (as cited by the LA above), which found itself in a similar position to Harris Academy, Orpington when he arrived in 2014, in terms of low pupil numbers and a deficit budget. His introduction of banding at that school has, by the LA’s own statement, clearly not had a negative impact on parental applications as the school is now ‘significantly oversubscribed.’

The executive principal goes on to say that:

“There are several other academies within the Harris Federation that use a Banding Test in order to ensure that their cohort is representative of the broader ability range. As well as having an impact on overall demand...there is also a positive educational impact from having a cohort presentative [sic] of the national ability range.”

43. The minutes of the meeting of 20 February 2024 evidence a lengthy and robust discussion by the trustees in relation to the introduction of banding. This included exploring with the executive principal whether the banding test would seem off-putting to parents, whether it could have a negative impact on applications, how information about the test would be communicated to parents/carers and what the effect of banding would be while the school was undersubscribed.

44. I note that all children will be accepted, regardless of the band into which they fall, until and unless the school is oversubscribed.

45. The evidence is such that it is clear that the introduction of banding, and the test which is an integral part of banding, is an established practice within the Harris Federation. The school is not, therefore, introducing a practice which is out of step with other Harris Federation schools. Indeed, the executive principal has overseen the introduction of

banding at his other school and seen the positive impact in terms of parental preference, pupil numbers, financial stability and academic improvement.

46. The Code is clear in its requirements for the introduction of banding as a form of selection as set out above. The school has been clear that it is seeking to produce an intake that is representative of the national ability range as permitted by paragraph 1.25 c) of the Code.

47. I have looked at the arrangements and the school's website and find that all of the conditions within the Code relating to the introduction of banding have been met.

48. I therefore do not uphold the objection to the introduction of banding.

Other Matters

49. The following matters do not conform with the requirements of the Code:

50. In paragraph 7.1.1 of the arrangements there is no reference to children who appear to have been in state care outside of England and ceased to be in state care as a result of being adopted (paragraph 1.7 of the Code and note 16 pertaining to that paragraph).

51. The sentence in point four of paragraph 7.1.4 of the arrangements which states "For the avoidance of doubt, or a step-child or a child of a cohabiting partner" does not make sense. Presumably it should read "neither a step-child nor a child of a cohabiting partner who lives elsewhere, will be eligible for a place under this category".

52. At paragraph 15.10 there is no text.

53. The school has already acknowledged the issues that I have raised under section 88I, relating to the ways in which the arrangements do not comply with the requirements of the Code, and has provided me with its proposed revisions. Such revisions are permitted by paragraph 3.6 of the Code. I am grateful to the school for their co-operation. The Code requires that the arrangements be amended to address the points set out here, and the admission authority will be required following this determination to make the necessary revisions. In this instance, the changes must be made by 31 August 2024.

Summary of Findings

54. The evidence provided by the school and the LA's own documentation shows that the LA's need for secondary places is not in the east of the borough where the school is located, but particularly in the north-west. The use of a single secondary planning area across the borough is hampering the LA's efforts to address the shortfall in places and they are seeking to address this via the proposed change to create two secondary planning areas. Whilst the retention of the PAN of 180 would provide the LA, on paper, with their desired five percent of surplus places, it would not actually address the shortfall in the areas where more places are needed. The fact that the school is undersubscribed and that a considerable proportion of parents whose child is offered a place at the school choose not

to take it up do not support the LA's argument that the additional places are needed to support parental preference.

55. The school has demonstrated its urgent need to address the organisational, curriculum, staffing and financial difficulties caused by the difference in the number of children offered places by the LA and the number of children who actually join the school each September. The school's financial challenges are exacerbated by the high number of children arriving without the funding to support their needs. This is in line with the LA's identification of the high and growing number of children requiring EHCPs across the borough as the authority's single biggest challenge. I do not consider that the LA's case outweighs the needs of the school in this instance and, consequently, I do not uphold the objection to the reduction in the PAN to 120 from 2025.

56. The LA has objected to the school's decision to introduce banding from September 2025, arguing that it will be off-putting for parents and is illogical in an undersubscribed school. The executive principal has demonstrated the positive impact of the introduction of banding at the other school that he leads, which is within the same MAT. Since its introduction, the school has become more popular with parents and is now oversubscribed, countering the LA's argument that the banding test may discourage parents from applying.

57. Banding is a legitimate form of selection as permitted by the Code and the school has met all of the requirements prescribed by the Code. I, therefore, do not uphold the objection.

Determination

58. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2025 determined by the governing body for Harris Academy, Orpington in the London Borough of Bromley.

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

60. 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 by 31 August 2024.

Dated: 29 July 2024

Signed:

Schools Adjudicator: Mrs Tess Gale