



DETERMINATION

Case reference: ADA2859 and ADA2872

Referrers: Oxfordshire County Council and North Oxfordshire Academy

Admission Authority: The Aspirations Academies Trust for Banbury Academy, Banbury, Oxfordshire

Date of decision: 27 August 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for Banbury Academy determined by the Aspirations Academy Trust, the admission authority for the school, for admissions in September 2016.

I have also considered the arrangements as a whole in accordance with section 88I(5) of the Act. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) of the Act the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of the Schools Adjudicator by Oxfordshire County Council, the local authority (the LA); and by North Oxfordshire Academy (NOA) concerning the admission arrangements for September 2016 (the arrangements) for Banbury Academy (the school) a secondary academy school for pupils aged 11 to 18 years.

2. The objection from the LA refers to 18 aspects of the school's arrangements that are said to contravene the School Admission Code (the Code). These include matters such as the inclusion of required definitions and the use of banding. The objection from NOA has four aspects that are said to contravene the Code. In the main these aspects cover the same issues as included in the LA's objection.

Jurisdiction

3. The terms of the academy agreement between the Aspirations Academies Trust (the trust) and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust, which is the admission authority for the school, on 13 March 2015, on that basis.

4. The LA submitted its objection to the arrangements for 2016 on 15 May 2015 and the NOA submitted a letter of objection dated 22 May 2015. I am satisfied these objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

5. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

6. In considering the arrangements for admissions in September 2016, I have had regard to all relevant legislation and to the Code.

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

- the LA's objection dated 15 May 2015 with 12 appendices; a further letter dated 2 July 2015 and responses to my enquiries dated 14 and 27 July 2015;
- the NOA's letter of objection dated 22 May; and further information sent on 26 June 2015;
- the school's initial response to the objection dated 26 May 2015; and further responses dated 3, 18 and 30 June 2015, and 9 July 2015;
- minutes of a meeting of the trust held on 13 March 2015 at which the determined arrangements for 2016 were formally approved;
- minutes of a meeting of the Local Advisory Board for the school held on 24 February 2015 at which the arrangements were agreed;
- the determined arrangements for admission in 2016;
- a set of proposed revisions to the arrangements received on 10 July 2015 to be considered and approved by the trust; and
- the LA's composite prospectus for parents, "*Moving On- 2015*".

8. I considered the arrangements and sought a meeting at the school to discuss the objections. I have taken account of information received during the meeting that I convened at the school on 24 June with representatives of

the school, the LA and the NOA; and of the further information which has been submitted since that meeting by all parties.

The Objections

9. The referral from the LA raises 18 issues and that of NOA four matters for consideration. Each aspect is recorded below with the relevant paragraphs of the Code that may have been contravened.

10. The LA's objection:

- i. The objector questions whether the school will be able to measure the distance from home to school as stated in its arrangements. Code 1.13.
- ii. The objector contends that it is unfair for parents who have shared responsibility for a child to be able to 'self-assign' which of the alternative addresses used by parents is the main address for the purpose of admission to the school. Code 1.13.
- iii. The school's system of assessing the ability of applicants, in the banding process is questioned. There are several strands to this aspect of the objection: that a literacy test is not required when considering the applications of looked after children and previously looked after children; that it is not clear whether the system used is based on the ability profile of applicants or the national ability profile; that the literacy test could be viewed as a test of aptitude rather than ability; that the banding arrangements will lead to a less balanced intake for the NOA, a neighbouring school. Code 1.23, 1.25, 1.26, and 1.28.
- iv. The arrangements for late applicants to take the literacy test and for those children who do not take the test are not fair or reasonable: Code 2.9a and 2.9e.
- v. The arrangements have the potential to change the ethnic composition of the school's intake and there may be discrimination against applicants from within the community for whom English is a second language. Code 1.31 and 1.32b.
- vi. The high priority given to the children of staff at the school in the oversubscription criteria is inappropriate and unfair and not in the interests of the wider community. Code 1.39.
- vii. The published admission number (PAN) fails to reflect the school's capacity to accommodate a greater number of students.
- viii. There is no statement of commitment to the Fair Access Protocol. Code 3.11.
- ix. In-year admission procedures do not meet the requirements of

the LA's co-ordinated scheme.

- x. Given the lack of secondary school capacity in the town, the school's waiting list should be maintained for the full school year. Code 2.14.
 - xi. There is no mention of requesting evidence that a child was previously looked after. Code 1.7.
 - xii. There is a lack of information about how fraudulent applications will be managed. Code 2.13.
 - xiii. The procedure for processing applications for admission out of year group has been omitted. Code 2.17.
 - xiv. There is no information about the procedure the school would use when the last remaining place is offered to one of the children from a multiple birth.
 - xv. The arrangements were not sent to the LA after they were determined. Code 1.47.
 - xvi. The arrangements for admission to the sixth form are not fit for purpose because they describe the PAN for the admission of external students as "up to 60" which is insufficiently clear; there are only two oversubscription criteria relating to looked after and previously looked children and siblings; and distance along safe walking routes cannot be measured and therefore as this is not possible there is no viable tie-breaker. Code 1.2 and 2.6
 - xvii. The consultation for the arrangements was inadequate. Code 1.42 to 1.44.
 - xviii. The school does not have a catchment area which would ensure that all applicants in the area would be able to obtain a place in a local school. Code 1.14.
11. The second objection from the NOA contends that:
- xix. Paragraph 1.44c of the Code has been contravened because the school did not consult "*all other admission authorities within the relevant area*". In particular the consultation document was not sent to all primary head teachers in the area for their comments as stated, but was sent with a request for it to be circulated to parents. At no point was the NOA directly consulted and given the potential impact on that academy this was a serious omission on the part of the school.
 - xx. The school has taken account of the number of year 10 students from the school admitted to Space Studio Banbury when it increased the PAN to 210.

- xxi. Banding by ability contravenes paragraph 1.9d of the Code which states that schools must not introduce any new selection by ability; such selection may be contrary to the Equality Act 2010 as it may have an adverse impact upon students with English as an additional language and those without an Education, Health and Care Plan but with additional needs; that literacy tests are only one measure of ability; and finally the arrangements contain two statements that describe entirely different banding methods and which take no consideration of the ability characteristics of the local community.
- xxii. It is unclear how in-year admissions to the bands will be managed.

Other Matters

12. In reviewing the arrangements as a whole there are matters which appear to contravene the requirements of the Code. These include the publication of the arrangements on the school's website; the wording of oversubscription criterion 5; the timing of the test (in this case the banding test), so that parents may be informed of the outcome before the closing date for applications to secondary schools; and the sixth form arrangements.

Background

13. Banbury Academy converted from a foundation school to a sponsor led academy school on 1 August 2012 and it is one of four secondary schools serving the local area of Banbury and Bloxham. A separate academy free school, the Space Studio Banbury was opened on the school site in September 2014 with the capacity to accommodate 300 students aged 14 - 18 years. There are approximately 75 students on roll in the first year of operation.

14. The school is sponsored by the Aspirations Academy Trust which is a multi-academy trust of primary and secondary schools. The trust has agreed the principles for admissions for its group of academies. Policy is developed for each school through discussion between the central management team, the principal and the relevant Local Advisory Board. The trust's website refers to Secondary Academy Admission Principles and states, *"Our secondary academies are measured for academic performance against national averages. For this reason all our Aspirations Academies aim to provide places for local children within a profile that compares to the national distribution of ability. This is achieved through the use of three ability bands - high, middle and low. To allocate Year 7 students to the appropriate band all applicants to the Academy are required to sit a Literacy Test (in our mainstream academies. Students sit a numeracy test for entry to the science and maths based Space Studios). As these tests are conducted before the students join the academy this also allows the academy to provide an appropriate education for each student from the moment they arrive. Students are allocated to an ability band on the basis of their literacy test score. There*

are 3 ability bands - the percentage of places available in each band is determined by the profile of the national distribution of ability.”

15. The supplemental agreement to the master funding agreement states that the school has capacity to admit 1953 students including a sixth form of 350 places and that the school will provide for the admission of 180 students in years 7 to 11. The school was not oversubscribed for 2015; there were 263 applications and of these 103 were first preferences and 119 offers were made for the 180 places available. The trust has determined a PAN of 210 for admission to the school in 2016, an increase of 30 places from 2015.

16. In 2014 an objection was made by the LA about the school’s arrangements for 2015 but those arrangements had not been properly determined by the trust and therefore the objection could not be considered by the adjudicator. This objection submitted by the LA refers to the arrangements for admission to the school in September 2016. The arrangements list the oversubscription criteria in the following priority order:

- “1. Looked after children and all previously looked after children. Previously looked after children are children who were looked after but ceased to be so because they were adopted, (or became subject to a child arrangements order or special guardianship order. Such students will be given top priority in each band before the oversubscription criteria is applied.*
- 2. Children with a sibling already at the Academy, ordered by shortest distance between home and the academy.*
- 3. Children who currently attend a Primary Aspirations Academy, currently (Name), ordered by shortest distance between home and the academy.*
- 4. Children of staff in the following circumstances:*
 - a. where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made and/or*
 - b. children of newly appointed staff, filling a post with a “demonstrable skills shortage” (School Admissions Code 2012)*
- 5. Children who have the shortest distance between home and the academy.”*

Consideration of Factors

17. The objectors have raised common issues detailed above in points iii), v) and xxi) concerning the process of banding applicants for admission to the school; and about the adequacy of the annual consultation recorded in points xvii) and xix) respectively. I shall leave my consideration of these two detailed aspects of the objection until I have addressed the remaining concerns.

18. The LA questions whether the school will be able to measure the distance from home to school as stated in note 7 of the arrangements. The Code says in paragraph 1.13, “Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the

'home' address will be determined and the point in the school from which all distances are measured"; Note 7 of the arrangements says: "Priority will be given to those children who live closest to the school by the nearest designated safe walking route as defined on the Geographic Information System measured from the centre point of the land parcel of the child's home address."

19. However, although the LA assesses home to school distance for applicants to all maintained schools and offers this as a free service to academy and academy free schools in the area, it only offers two alternatives: distance as measured by a straight line or via the nearest 'designated route'. The LA says that unless the school has arranged to undertake the measuring of safe walking routes itself this particular measure of distance cannot be used. It has no capacity to undertake this additional measuring in the free service it offers to schools. It became apparent during the meeting at the school, that the trust was not aware that safe walking routes were not measured by this LA. If a parent relied on this measure of home to school distance in order to seek priority for admission under oversubscription 5, *"Children who have the shortest distance between home and Banbury Academy (see notes 6 and 7)"* there would be no way of verifying a claim based on nearness via a safe walking route. The tie-break also relies on the same measure of distance and would also be invalid. Although the arrangements appear to meet the requirements of paragraph 1.13 of the Code, they do not, as there is no means of verifying the *"nearest designated safe walking route"* and for this reason I uphold this aspect of the objection.

20. The school says it will use the free service provided by the LA and will notify the LA of its preferred option before amending note 7 for parents; and if the school elects to use 'designated routes' it will provide a brief definition for parents. At the time of writing, this proposed amendment has not been made to the published admission arrangements.

21. The LA has a further concern about the home address to be used for the purpose of admission, where parents live apart but have shared responsibility for a child. The LA contends that it is unfair for parents who are making an application to the school to be able to 'self-assign' which home address is to be used for the purpose of admission because this does not reflect the approach of the LA for community and voluntary controlled schools. Note 6 of the school's arrangements states, *"...Where a child spends time with parents at more than one address, then the address given should be the one that they live at (i.e. sleep at) for the majority of term-time weekdays. Where care is split equally between mother and father, parents must name which address is to be used for the purpose of allocating a school place."*

22. Paragraph 1.13 of the Code, cited above, requires admission authorities to 'make clear' how home address will be determined and says, *"This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent."* The arrangements refer to 'term time weekdays' i.e. Monday to Friday, while the LA's own arrangements

on the other hand refer to 'term-time school nights i.e. Sunday to Thursday. In discussion at the meeting both parties agreed that their respective definitions described an unequal number of either days or nights and that it should be possible to assess for either set of arrangements, which parent has greater responsibility during term times. In my opinion note 6 in the arrangements does not contravene the Code and I do not uphold this aspect of the objection. However, the school says it will remove the last sentence of note 6 for the avoidance of doubt; and in proposed amended arrangements that were sent to me this has been done, but not in the arrangements published on the school's website.

23. The next issue raised by the LA relates to the section of the arrangements which says, "*Students who make late applications and/or did not take the ability tests will only be considered if there are places remaining once allocations have been made to all those who applied on time and sat the tests...*" It contends that this approach is not fair or reasonable and there should be a series of published dates on which children, whose parents have made a late application, could take the literacy test.

24. If the school uses an approved form of selection which it does, it is appropriate to say how it will treat late applications and how it will deal with applications where the applicant did not take the test. It can allocate places to those who have applied on time and have done the test, before others. Once it has allocated these places it must consider the other applicants. If the school is not oversubscribed and there are more places than remaining applicants then they must all be admitted. If there are more applicants than places then the school will establish its waiting list and comply with the requirements of paragraph 2.14 of the Code. The school is not refusing to admit applicants who have applied later than others or who have missed the test, it is setting out the order in which applications will be considered. However, the reference to "students who did not take the test" fails to distinguish between those who must be offered a places whether they take the test or not and other applicants. Applications for looked after, previously looked after and children who have a statement of special educational need or an education, health and care plan must be admitted whether they take the test or not as I refer to below.

25. The arrangements tell parents that all applicants will be required to sit a literacy test in December 2015. No alternative dates are set or any explanation provided as to what will happen if a child has missed the test. The school should have alternative arrangements that set out how a child unable to take the test on the appointed day, for example because of illness, would be able to do so. Parents may assume that if the test is missed their application will not be considered. As they stand the arrangements contravene the requirements set out in the Code which say in paragraph 2.9. "*Admission authorities **must not** refuse to admit a child solely because: a) they have applied later than other applicants; ore) they have missed entrance tests for selective places*" and I therefore uphold this part of the objection. I will refer to the timing of the test under "Other matters".

26. In the next aspect of its objection the LA says that oversubscription 4 refers to the 2012 Code and that the high priority given to the children of staff at the school in the oversubscription criteria is inappropriate and unfair because staff may or may not live in Banbury and as there is a shortage of secondary provision in the area this would not be in the interests of the wider community. The arrangements do make a reference in parenthesis to the (*"School Admissions Code 2012"*). However the wording of the 2014 revised Code is identical in this regard and the school says that leaving the previous reference in was merely an oversight and it readily agreed to remove it.

27. It is for each admission authority to decide which oversubscription criteria to use and the Code permits an admission authority to prioritise the children of staff in order to aid the recruitment and retention of staff. These arrangements do not contravene the Code and I do not uphold this part of the objection. However, it would aid the clarity of the arrangements if the school provided a clear definition of "staff" in order that parents may be aware of how many employees will gain priority for their children when this oversubscription is applied.

28. In a further aspect of the objection the LA asserts that the Code is contravened because there is no statement in the arrangements that the school will follow the Fair Access Protocol and a clear commitment should be made in simple statement. The Code says in paragraph 3.11, "*All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.*" At the meeting it was noted and agreed that while all schools are required to participate in fair access protocols, admission authorities are not required by the Code to make a statement to this effect in their arrangements. On this particular point, in my opinion as there is no mandatory provision regarding a statement there cannot be an objection to be either upheld or not upheld.

29. In its next point the LA says that given the lack of spare capacity in secondary schools in Banbury it would ensure a more equitable result if the waiting list for the school was maintained for the whole of the school year. Paragraph 2.14 of the Code says, "*Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.*" The arrangements say that the list of continued interest for Year 7 will be kept until the last day of December 2016 which complies with the requirement set out in the Code. I do not uphold this aspect of the objection.

30. The LA further contends that the arrangements contain no request for evidence that a child was previously looked after. Paragraph 1.7 of the Code requires that looked after and previously looked after children are given highest priority in the oversubscription criteria and the arrangements meet this requirement. There is no requirement for schools to state in their

arrangements that they will require evidence that a child was previously looked after and indeed it would be unusual for this to be the case as it is might be expected that a local authority's common application form would give the parent/carer the opportunity to record whether the child is a looked after child or a previously looked after child who has been adopted or made subject to child arrangements order. As above, there cannot be an objection on a matter for which there is no mandatory requirement.

31. In the view of the LA the arrangements make no reference to how fraudulent applications will be considered and this suggests to the LA that an 'ad hoc' approach may be used. Paragraph 2.13 of the Code says "A school **must not** withdraw a place once a child has started at the school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that the child has been at the school **must** be taken into account. For example, it might be considered appropriate to withdraw the place if the child has been at the school for less than one term." After discussions at the meeting the school has agreed to add some information for parents. However, there is no stated requirement in the Code for admission authorities to include information about the process they will follow if they suspect they have received a fraudulent application. Again I make no judgment on this matter as it is outside my jurisdiction.

32. The LA says that the arrangements do not include information about the management of applications for admission to a younger or older age group and further, the school should not give a lower priority on the basis that an applicant is seeking a place outside of their chronological age group. Paragraph 2.17 of the Code says "Parents may seek a place for their child outside of their normal age group Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." The school has acknowledged that this information has been omitted. As the arrangements do not meet the requirement set out in the Code I therefore uphold this part of the objection. The school agreed to add the necessary information into its arrangements and has made this change in its proposed amendments.

33. It is the view of the LA that where the last remaining place is offered to a child from a multiple birth it would be appropriate for the school to admit all the children from that multiple birth. The arrangements say that the local authority will use random allocation on behalf of the school to determine which child should be admitted. At the meeting the school said that if the last remaining place was allocated to the one child from a multiple birth then in practice they would probably admit the other child/children and would now state this in the arrangements. However since there is no mandatory requirement set out in the Code for the admission authority to state this I make no judgment on this.

34. The LA alleges that when the arrangements were determined the school did not send a copy to the LA "once determined" as required by paragraph 1.47 of the Code and when it contacted the school on 12 March 2015 to request a copy of the arrangements it received no response. The

school explained that the trust determines the arrangements centrally and sends them to the Local Advisory Board for agreement locally. The deadline for the determination of arrangements for 2016 was 15 April 2015, although in future years it will be earlier in the school year to meet the requirement set out in paragraph 1.46 which says, "...Admission authorities **must** determine admission arrangements for entry in September 2016 by **15 April 2015** and for all subsequent years, by **28 February** in the determination year." The date by which the arrangements should have been sent to the LA was 1 May 2015 and this was deadline was not met. However, it was agreed that in future the school would ensure that arrangements are sent to the LA as required by the Code. Paragraph 1.47 of the Code says, "Admission authorities **must** send a copy of their determined admission arrangements for entry in September 2016 as soon as possible before **1 May 2015**, and for all subsequent years, as soon as possible before **15 March** in the determination year." The requirement of paragraph 1.47 of the Code breached and I therefore uphold this aspect of the objection.

35. Another concern of the LA is that the arrangements for admission to the sixth form are not fit for purpose and it cites three reasons for its view: the PAN for the admission of external students says "up to 60" which is insufficiently clear; there are only two oversubscription criteria relating to looked after and previously looked children and to siblings; and distance along safe walking routes cannot be measured and therefore as this is not possible there is no viable tie-breaker.

36. The oversubscription criteria for admission to the sixth form state:

- a) "Looked after children (Note 1 - see Notes above) and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted, (Note 2) (or became subject to a child arrangements order (Note 3) or special guardianship order (Note 4)). These students should meet the academic requirements for the level of course applied for as published in the Academy prospectus.
- b) Children with a sibling already at the Academy, ordered by shortest distance between home and Banbury Academy (see Note 5, Note 6 and Note 7)"

37. Responding to the first issue the school quoted from its arrangements which say, "Banbury Academy has an agreed admission number of 60 students in Year 12 for students from outside Banbury Academy." This is correct and the statement appears on page 1 of the arrangements under the heading "Admission arrangements approved by the Secretary of State. However, the PAN is stated less clearly under the heading "Admission to Post 16 Provision" which is the section that applicants to the sixth form are at least or more likely to read and it states "Entry into Year 12 from students outside Banbury Academy has been set at up to 60." Paragraph 1.2 of the Code says, "As part of determining their admission arrangements all admission authorities **must** set an admission number for each 'relevant age group'." A footnote

defines a relevant year group, “*This is 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 school **must** therefore set a PAN for Year 12 which is a single number, so that students attending other schools and their parents are able to look at the arrangements and assess the likelihood of gaining admission.

38. The second issue concerning the arrangements for admission to the sixth form is that there are only two oversubscription criteria. These relate to the admission of looked after and previously looked children and to siblings. The school has omitted the final oversubscription criterion for ‘any other applicants’. The arrangements clearly contravene the Code which says in paragraph 1.6, “*The admission authority of the school **must** set out in their arrangements the criteria against which places will be allocated at the school.*”

39. The school has now proposed a third oversubscription criterion, “*Children who have the shortest distance between home and Banbury Academy (see notes 6 and 7).*” However, note 7 has not yet been revised in the proposed amendments and still refers to safe walking routes.

40. The final strand of the LA’s concern is the measurement of home to school distance along safe walking routes. I have already considered this matter above but external applicants seeking admission to the sixth form may only read the sixth form arrangements and as they stand they do not provide an accurate description of how home to school distance is measured. The LA is correct to say that the tie-breaker is not viable. Taken together there are clear contraventions of the Code in relation to admission to the sixth form and I therefore uphold this aspect of the objection.

41. The next part of the objection is that the school is the only one of the four secondary schools that serve Banbury and Bloxham that does not have a catchment area. The LA says that having catchment areas for all schools ensures that parents can identify a ‘catchment area school’ for which their child has priority and it will be difficult to adjust the catchment areas of other schools to ensure that all children have a named catchment area school because other schools do not have the capacity to provide sufficient additional places. The Code sets out how catchment areas must be designed. However, there is no requirement for the school to have a catchment area and therefore despite the LA’s valid concern about the overall capacity in the area to accommodate the number of pupils identified in its projections of pupil numbers, the school has not contravened the Code and I do not uphold this aspect of the objection.

42. I will now return to the areas common to both objections, namely the use of banding as part of the admission arrangements and the adequacy of the consultation process.

43. The NOA contends that the introduction of banding by ability contravenes the Code and cites paragraph 1.9d of the Code which says, “*It is for admission authorities to formulate their admission arrangements, but they*

must not: d) *introduce any new selection by ability.*” The objector is correct to say that the introduction of selective arrangements is not permitted by the Code, but paragraph 1.9d must be read alongside footnote 20 and paragraphs 1.17 to 1.33 of the Code as to what is and what is not permitted by way of introduction of certain types of selection.

44. Paragraph 1.25 states, “*Pupil ability banding is a permitted form of selection used by some admission authorities to ensure that the intake for a school includes a proportionate spread of children of different abilities.*” Using or introducing a system of banding applicants for admission to the school does not contravene the Code; although there are other mandatory requirements that the admission authority must comply with in relation to banding and I will consider these later. I do not uphold the objection that the school could not introduce banding.

45. The LA expresses concern that it is not clear in the arrangements whether the approach the school is using is based on the ability profile of local applicants or the national ability range because there are two statements and they seem on first sight to be contradictory.

“The percentage of places available in each band will be determined by the profile of the national distribution of ability.”

“The number of places in each ability band will be determined by GL Education who administer New Group Reading Test by matching the percentage of places in each band to the ability profile of the applicants for places that year.”

46. In its response to the LA’s objection the school says that the two statements “*need to be read together*”. Unfortunately they do not appear together in the arrangements. The first statement is contained in a section entitled ‘*Process of Application for year 7*’ on page 1 and the second appears separately on page 2 under the heading, “*Procedures where the academy is oversubscribed....*” When I read the arrangements I was also of the view that the school’s arrangements did not set out, in a way that parents might understand, whether the ability profile of all local applicants was taken into account when the students were placed into three bands or whether the national ability range would be applied.

47. The number of places in each ability band is not determined by GL Education. Once the national ability range is known and the school is informed of the percentage of places in each of the three bands; and if the school is oversubscribed, it will apply these proportions to the PAN determined by the school. The arrangements should make clear the likely number of places in each band. If, as forecast by the LA, the school is not oversubscribed in 2016 every applicant must be admitted and parents should be advised of this in the arrangements.

48. It seems to me from the fact that both the LA and the NOA express concerns about this matter that the arrangements may not be sufficiently

clear; or confusion may arise because banding arrangements can take different forms. The Code at paragraph 1.32 refers to three ways in which 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; c). the national ability range. The school uses a national ability range because the trust, a multi-academy trust, requires all its secondary schools to seek to have the national ability range represented in its schools. However, parents might not be aware of the implications of the statement in the arrangements, "*The percentage of places available in each band will be determined by the profile of the national distribution of ability.*" In my opinion this does not provide a sufficient explanation to parents about the nature of the banding arrangements, the percentage of places and therefore number of places in each band and their chances of gaining admission for their child to the school. As the arrangements are not sufficiently clear as required by paragraph 14 of the Code I uphold this aspect of the objection.

49. Both objectors have expressed their concern that the decision to allocate places according to the proportions of the national ability range takes no account of the local context of the school. The LA says that the use of banding could lead to a "less balanced intake" at the NOA. At the meeting in the school the LA confirmed that data in its projections for secondary schools show that in the short term the school is likely to remain undersubscribed, particularly in the light of the decision to increase the PAN to 210; and it seems likely that for 2016 the school will be able to offer places to all applicants regardless of the national versus local ability profiles, but this does not remove from consideration the concerns of the objectors, even though it is only the 2016 arrangements that I am considering.

50. One benefit of using a national ability range for admissions is said to be that it widens the geographical area from which pupils are drawn, opening up access to popular schools to a wider range of families. The objectors contend that if the school uses banding based on a national ability range using only a test of literacy then the ability profile of the school might not reflect the local ability profile with the result that access for local children may be adversely affected. This is based on the view that there is likely to be a greater number of local children who qualify for the lowest band, because of the number of ethnic minority families and those for whom English is not the first language in the local community. The NOA referred to a section of the Cherwell Local Plan 2012 (and subsequently provided a link to it for all parties) which outlines the local characteristics and socio- economic profile of Banbury. In the view of the NOA it provides the context against which the school's decision to band with reference to the national ability range should be considered. However, when a school decides to admit students with reference to the national ability profile it follows that admissions to the school will not be based solely on the overall range of ability of children in the local community close to the school.

51. The school has used the system for three years but for each of those years from 2013 to 2015 the school has not been oversubscribed and all applicants have therefore been admitted. I have reviewed the data provided

by the school from 'RAISEonline' which shows the proportions of students in three groups of low, middle and high attainers for the last three years. Based on the prior achievement of each group, the Year 7 intakes have been assessed as follows:

| | School | | | National | | |
|------|--------|--------|------|----------|--------|------|
| | Low | Middle | High | Low | Middle | High |
| 2012 | 24 | 61 | 15 | 17 | 52 | 31 |
| 2013 | 15 | 51 | 35 | 14 | 48 | 38 |
| 2014 | 8 | 58 | 34 | 13 | 49 | 38 |

52. The table above shows that when the academy opened in 2012 there was a greater proportion of students in the low ability band of Year 7 and about half the number of high attainers compared to the national ability range. By 2014 the ability profile of the intake had changed markedly with a much lower proportion of the intake in the low ability band, a higher proportion in the middle band and with the higher ability band closer to the national ability range. Yet during this period the banding test of ability was scheduled after national offer day and the test was only used by the school to assess students who had already been allocated a place, in order to make provision for targeted support to those students who require additional assistance.

53. The changes to the relative proportions of students within each band cannot be attributed to the banding arrangements to date; and despite the concerns of the objectors about the situation that may arise when the school becomes oversubscribed, from the data that has been made available to me it seems likely that the proportion of students admitted to the school in the lower band might increase rather than decrease in future years as the school's intake begins to reflect the national ability range. No evidence has been presented to date that suggests that applicants from the local community who are assessed as in the lowest band, will be less likely to gain a place at the school and I therefore do not uphold this part of the objection.

54. The objectors also have concerns in common about the validity of using a literacy test to band applicants and the possible outcome of changing the ethnic composition of the school's intake. Paragraph 1.31 says, "*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.*"

55. The school says, "*The literacy test is perfectly fair for all students as it is not a form of selection it merely places them in a band and helps the academy to identify the pupils need. It works in exactly the same way as a CATs test where someone with EAL would be equally disadvantaged.*"

Support will be provided in the test in line with exam regulations. The banding only applies to oversubscription; the test is currently being run however despite being undersubscribed as, as stated in earlier emails, it provides useful information to provide instant student support. After further discussion at the meeting the school agreed that for some applicants with additional needs adjustments could to be made and that assistance could be offered during the tests

56. The test used by the school must be a valid assessment of applicants' ability so that they are allocated to the correct band. I enquired of the school whether a literacy test on its own would provide a fair assessment of the ability of applicants with additional needs or for those for whom English was a second language. The school is of the view that is fair to all applicants. *"We consider literacy testing to be the best way of assessing a student's needs as they join the academy and is one that is used as a performance measure at the end of Key Stage 2. The testing not only helps determine a student's place in the banding arrangements it allows the Academy to plan provision for each student well in advance of their entry to the academy at the start of Year 7."* If the school does indeed want to assess the incoming students in order to provide the necessary support then it does not need to use banding as part of the admissions process, but it could assess those students who are allocated on National Offer Day on a date before the end of the school year.

57. A literacy test provides only one measure of ability; and given the characteristics of the local community which includes families of ethnic minority origin and those for whom English is a second language it is questionable whether the test will be a true measure of the ability of all applicants.

58. In particular the objectors questioned whether the literacy test could be viewed as a test of aptitude rather than ability. The school responded and said, *"We are not selecting by aptitude. We are using banding to achieve a nationally representative intake..... Literacy is not a subject which is representative of a proposed specific intake it is merely a means of identifying the national profile."*

59. The school also says, *"... All students who apply sit the literacy test and if oversubscribed places will be allocated to the number of places in each band according to the rest of the oversubscription criteria. This is why the testing would take place after students have applied and not as a form of entry."* This appears to misunderstand that a child placed in one band that is oversubscribed with applicants is then considered for a place against the oversubscription criteria, whereas a child in an undersubscribed band is allocated a place. However, if the oversubscription criteria were applied to the applicants without reference to banding the child not allocated a place may well be successful.

60. The school says it is willing to consider any test and might use the key stage two outcomes. The LA was of the firm view that the school would not be able to use the key stage results and that although primary schools could

provide detailed information about the attainment of their pupils it was unlikely that they would wish to undertake the task of providing this information to the school. The school says it merely wants a sound method of assessing the ability of incoming students in order to provide the support that is necessary and it is willing to consider a cognitive ability test (CAT).

61. I do not consider that the use of a banding test that only measures one aspect of a child's ability, that is literacy, and one that may well disadvantage those with additional needs or whose first language is not English meets the requirements of paragraph 1.31 to give an accurate reflection of a child's ability irrespective of sex, race, or disability. The test must be a true test of ability. I uphold this aspect of the objection.

62. The LA objected that a literacy test is not relevant in determining the admission of looked after or previously looked after children. The Code says in paragraph 1.28 says, "*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*" It also says in paragraph 1.7, "*All schools **must** have oversubscription criteria for each 'relevant age group' and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children.....*" The only exceptions to the priority to be afforded looked after and previously looked after children do not apply to banding. Neither looked after children nor previously looked after children can be required to take a test and for this reason I uphold this aspect of the objection.

63. The LA contends that consultation has been inadequate and the arrangements for 2016 should be the same as those set out in the funding agreement of 2012. This is based on the view that past consultations for 2014 and 2015 were unlawful and refers to the fact that there is no formal record in the minutes of the trust that the arrangements for those years were properly determined. This meant that a previous objection from the LA could not be considered because there was no jurisdiction for the adjudicator.

64. However, in a letter dated 21 November 2014 that relates to the previous objection mentioned above, the LA confirmed that the school had used its "consultation tracker" prior to 2015 to consult with maintained schools and neighbouring local authorities about changes to its arrangements. The LA said that in using the LA's system to consult the school had met the majority of the requirements for consultation contained in paragraph 1.44 of the Code but pointed out that there no evidence that the school had consulted with parents of children between the ages of two and eighteen or other persons in the relevant area who may have an interest in the proposed changes to the arrangements. The arrangements were published on the school's and LA's websites and in the composite prospectus for each year and places were allocated to the current Year 7 and 8 students using those arrangements. The arrangements included banding but this was not called into play as the school was undersubscribed. It is not reasonable in my view to hold to the view that the arrangements should be same as those stated in 2012 in the funding agreement.

65. As to the adequacy of the consultation, my jurisdiction is for the arrangements for admission to the school in September 2016 and both the LA and the NOA have raised this matter. The NOA contends that paragraph 1.44c of the Code has been contravened because the school did not consult “*all other admission authorities within the relevant area*”. In particular the consultation document was not sent to all primary head teachers in the area for their comments as stated, but was sent with a request for it to be circulated to parents. The objector said that at no point was NOA directly consulted and that given the potential impact on that academy this was a serious omission.

66. Evidence of consultation provided by the school included the consultation document and a response to NOA made during the consultation period. It says, “*...We believe that this is best done through the individual academies and schools in a local area, with the expectation that any academy that is part of a national Multi-Academy Trust would pass the consultation document to the relevant person in the organisation. This appears to be common practice as our academies regularly receive consultation documents from schools and academies in their own local area. In your particular case the United Learning Trust is the admissions authority of which North Oxfordshire Academy is a member.*” When I enquired how the consultation had come to the attention of that school I was told that an email to the administrative inbox had been brought to the attention of the principal, who accepts that the school was consulted but expressed her view that a direct email addressed to her at the beginning of the consultation period would have been more appropriate.

67. Paragraph 1.44 of the Code sets out the mandatory requirements for consultation, “Admission authorities **must** consult with:

- a) parents of children between the ages of two and eighteen;
- b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;
- c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
- d) whichever of the governing body and the local authority who are not the admission authority;
- e) any adjoining neighbouring local authorities where the admission authority is the local authority; and

68. In the school’s response to the subsequent objection from NOA it says, “*The operation of a Multi Academy Trust is very different to an ordinary school. The consultation was conducted by Banbury Academy and the governors fully informed of the outcomes. However, the MAT makes the decision about whether to change the admissions policy not the Local Advisory Board. Following the consultation, the Central Team of the Aspirations Trust and the Principal of Banbury met and discussed the issues raised. One or two minor amendments were made to the policy and it was issued and passed by the LAB so they were aware of the contents.*”

69. The consultation document lists the parties to be consulted and says

that groups will be consulted via a statutory notice in the local paper, by being published on the websites of the four trust academies in Banbury, and via a document sent to all primary head teachers in the area with a letter for them to distribute to parents. The document says the LA will be informed. The school provided a copy of its email to local primary head teachers dated 15 January and the LA observed that by this date the school was already a month into the eight week consultation period that had commenced on 16 December 2014. The group email did ask primary head teachers for their comments. At the meeting I asked if there was a corresponding email to secondary colleagues and a copy was provided. It too was dated 15 January but it was only sent to two of the three local secondary schools, to NOA and to Blessed George Napier School. The emails were sent to each school's administrative address and it was suggested that one sent directly to each head teacher might be more effective in eliciting responses. The LA says that there are other secondary schools in the neighbouring LA areas that admit students from Banbury and these too were omitted from the consultation and that overall, and it concluded "*The Local Authority believes that the efforts made to publicise the consultation were inadequate.....*"

70. Paragraph 1.43 of the Code states, "*For admission arrangements determined in 2015 for entry in September 2016, consultation **must** be for a minimum of 8 weeks and **must** be completed by **1 March 2015**. For all subsequent years, consultation **must** last for a minimum of 6 weeks and **must** take place between **1 October** and **31 January** in the determination year.*" Schools require time to meet with the governing body or trust; and other groups and councils must also be given time to organise their responses having consulted their members, so the late notification of the school's consultation failed to meet the requirements of the Code, as it was available to these groups for less than eight weeks.

71. The Code also requires consultation with parents of children aged two to 18 and I enquired how this has been managed. The school said it sent the consultation to primary schools and some of those had nurseries and there was a notice in the local free paper. It is not sufficient to publish proposed changes on school websites and the LA's website without also considering those places where parents of young children might see the consultation, such as on notice boards in health centres, playgroups, doctors' surgeries and local supermarkets. It is highly unlikely that parents of young children will scan either the LA's or the school's website. I was subsequently advised by the principal after the meeting that unfortunately the school had no record that a notice has been published in the local paper. In my opinion the consultation on the arrangements for 2016 was deficient in several regards detailed above and for these reasons I uphold this aspect of the objection.

72. The LA reminded the school of its free service in which it alerts schools when it has posted a consultation on its website and the school said it would use that service in future.

73. Two aspects of the LA's objection, namely that the PAN fails to reflect the school's capacity to accommodate a greater number of students; and that

in-year admission procedures do not meet the requirements of the LA's co-ordinated scheme; and two of the four matters raised by the NOA, namely that it is unclear how in-year admissions to the bands will be managed; and that the school has taken account of the number of year 10 students from the school admitted to Space Studio Banbury when it increased the PAN to 210 are not within my jurisdiction. Objections cannot be made to an increase in PAN as set out in paragraph 3.3b of the Code and in-year admissions are not within my remit.

Other Matters

74. In reviewing the arrangements as a whole there are matters which appear to contravene the requirements of the Code. The first matter is that when the arrangements were determined they were not published on the school's website as required by paragraph 1.47 of the Code.

75. The wording of the final oversubscription criterion (5) requires clarification. It says, "*Children who have the shortest distance between home and Banbury Academy.*" Given that children with siblings already at the school (3) and those attending feeder schools (4), have a higher priority for admission, and are also ordered by home to school distance it would be clearer to state. "Other children who have the shortest distance to travel from home to Banbury Academy....." The arrangements do not provide the clarity for parents required by paragraph 1.6 of the Code.

76. In the arrangements for 2016 the date for testing has been brought forward to December, after the closing date for applications on 31 October 2015 and before the national offer date of 1 March 2016. If the school is oversubscribed the outcome of the banding assessment would be used to place applicants in three bands that reflect the national ability range and then the oversubscription criteria would be applied to each band. The current arrangements therefore contravene paragraph 1.32c) of the Code which says, "*Admission authorities **must** take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place.*" The school has proposed an amendment to its arrangements so that the test is taken and parents informed of the outcome by the end of September 2015.

77. Although the arrangements have now been published they still refer parents to the 2015 prospectus. It states, "*Students who do not come from Banbury Academy will be invited for interview in spring/summer terms.....*" This document and the 2016 admission form refer to interviews which are prohibited by paragraph 1.9m of the Code. Schools may not interview children or their families for entry to Year 12, although meetings can be held to provide advice on options and to discuss the entry requirements for particular courses. The school explained that the purpose of the meeting was to discuss options available to students and said it would change the wording of the arrangements from "interview" to "meeting". I note however that the

application form for sixth form applicants still refers to, "*interview attended*". This reference must be removed from the 2016 application form.

78. There are several further matters of concern about the application form for admission to the sixth form which refers to:

- a. "*reference received*". Paragraph 1.9g forbids schools from taking account of reports from previous schools about past behaviour, attendance, attitude or achievement.
- b. It requests "*work telephone contact number*". Paragraph 1.9 f says that schools must not give priority to children according to the occupational status of parents.
- c. There is space for "*Parent/Carer Names*" but paragraph 2.4e states that both parents must not be asked to sign the application form. Parents and carers may assume that the school expects them to provide the names of both parents or both carers and that not doing so may affect their priority for admission.
- d. The form provides space for the student to certify that all the information given is correct. However, under the student's signature there is a statement for parents, "*I endorse this application*" with space for a parent signature. Students, as well as their parents, can apply for a place at a school sixth form in their own right as set out in paragraph 2.6 of the Code. Their applications do not require the endorsement of parents.
- e. The admission form on the school's website for admission to the sixth form in 2016 says, "*All applications should be received by 31 January 2017.*" This error must be corrected as soon as possible.

79. A draft of proposed amendments has been provided to me. These changes have yet to be approved by the trust and there are further matters to be considered and to be changed to provide great clarity for parents and to meet the mandatory requirements of the Code detailed above.

Conclusion

80. Having considered each aspect of the two objections and for the reasons given above I have concluded that the arrangements do not meet the mandatory requirements as set out in the Code in the matters of the adequacy of the consultation; the requirement for the school to send the determined arrangements to the LA; the definition of home to school distance; the arrangements for applicants who do not sit the test; information about the admission of students out of their chronological age group; the sixth form arrangements with regard to the PAN, the lack of a complete set of the oversubscription criteria and the issue of measuring home to school distance of external applicants, which applies also to the tie-breaker; the lack of clarity about the use of a local ability profile or the national ability range when

banding applicants; the use of a single test of literacy skill to measure the ability of students, particularly those from ethnic minority groups and children with English as a second language; and finally the requirement for looked after and previously looked children to take a test before being considered for admission.

81. However I am not persuaded that the arrangements contravene the Code in relation to: the provision for cases where parents have shared responsibility for a child; the arrangements for late applicants; the priority in the oversubscription criteria afforded to children of staff; that the waiting list is not maintained for the full school year; that banding arrangements cannot be introduced; that banding arrangements based on the national ability range will disadvantage children in the local community who are assessed as in the lowest ability group; and that there is no catchment area.

82. Where there are no mandatory requirements set out in the Code in relation to matters raised by the objectors I have made no judgement about those aspects of the objections.

83. Having used my powers under section 88I of the Act to consider the arrangements as a whole I have concluded that the arrangements contravene the Code in the further matters of the publication of determined arrangements on the school's website; the clarity of oversubscription 5; the sixth form arrangements as detailed above and the requirement for parents to be advised of the outcome of any selection test before the closing date for applications.

Determination

84. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for Banbury Academy determined by the Aspirations Academy Trust, the admission authority for the school, for admissions in September 2016.

85. I have also considered the arrangements as a whole in accordance with section 88I(5) of the Act. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

86. By virtue of section 88K(2) of the Act the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months.

Dated: 27 August 2015
Signed:

Schools Adjudicator: Mrs Carol Parsons

