

## DETERMINATION

**Case reference:** ADA3260

**Referrer:** Three members of the public

**Admission Authority:** The Royal Borough of Greenwich for Eltham Hill School, The John Roan School, Pumstead Manor School and Thomas Tallis School

**Date of decision:** 26 June 2017

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for September 2018 determined by the Royal Borough of Greenwich for Eltham Hill School, The John Roan School, Plumstead Manor School and Thomas Tallis School.**

**I find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 1 September 2017.**

### **The referral**

1. The admission arrangements for September 2018 (the arrangements) for the three community secondary schools and one voluntary controlled secondary school (the schools) in the Royal Borough of Greenwich (the local authority) were brought to the attention of the adjudicator by three members of the public. The schools are named in the following paragraph. The referrals concerned the use of banding in the arrangements. Two of the referrals also raised the same concerns with the admission arrangements of six academy schools in Greenwich and these are considered in separate determinations.

2. The parties to the referrals are the local authority, the governing bodies of Eltham Hill School, The John Roan School, Pumstead Manor School, Thomas Tallis School and the referrers.

## **Jurisdiction**

3. The referrers submitted objections to the determined arrangements for 2017 for these schools on 22 and 24 March 2017 and 16 May 2017. The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) required objections to the 2017 arrangements to have been submitted by 15 May 2016. The objections were therefore outside of my jurisdiction. These referrals, however, brought the 2018 arrangements for these schools to my attention; these are the same as those for 2017 other than the necessary alterations to dates. The 2018 arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the local authority, which is the admission authority for the schools, on 15 February 2017. As it appeared that they did not, or may not comply with requirements relating to admission arrangements I have used my power under section 88I(5) of the Act to consider the 2018 arrangements.

## **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. the referrals dated 22 and 24 March and 16 May 2017;
  - b. the local authority's response to the objection and supporting documents;
  - c. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
  - d. confirmation of when consultation on the arrangements last took place;
  - e. copies of the minutes of the meeting of the local authority at which the arrangements were determined; and
  - f. a copy of the determined arrangements.

6. I have also taken account of information received during and after a meeting I convened on 18 May 2017 at Woolwich Town Hall (the meeting). This meeting was attended by the local authority, representatives of The John Roan School and Thomas Tallis School and representatives of five of the six academy trusts which use similar admissions arrangements for schools in the borough. Plumstead Manor School, Eltham Hill School and the sixth trust were invited to send representatives to the meeting, but chose not to do so.

## **The Referrals**

7. Banding has been used as part of the admission arrangements for the majority of the publicly funded schools in the Royal Borough of Greenwich for many years. The three community schools and the voluntary controlled

schools are among the schools using banding. Two of the referrals covered all the schools using banding and one referral was restricted to the community schools and voluntary controlled school for which the local authority is the admission authority. Determinations ADA3265, ADA3266, ADA3267, ADA3268 and ADA3269 deal with the referrals as regards the academies as separate determinations are required for each admission authority.

8. The referrers said it was difficult to find details of how the banding process operated and questioned whether the process met the requirements set out in paragraphs 1.25, 1.26 and 1.27 of the Code.

### **Other Matters**

9. When I considered the arrangements as a whole, it appeared to me that they did not, or may not, meet the requirements in paragraph 2.14 of the Code concerning waiting lists. The arrangements also appeared not to meet the requirement in paragraph 2.17 of the Code concerning applications for places outside of the normal year group.

### **Background**

10. Banding has been a feature of the admission arrangements for most secondary schools in Greenwich for many years. Prior to 2017, children attending primary schools in the local authority were placed into five ability bands based on scores obtained in tests taken in Year 5. An increasing number of applications were being received for children who did not attend primary schools within the local authority. These children would not have taken the test and were placed in bands based on teacher assessment.

11. In its consultation on a new system of banding for 2017, the local authority recognised that: the placing of children into the five bands was not completely consistent, children were being required to take an additional test and the cost of testing was increasing. Following this consultation, the local authority decided to change the system of banding used for 2017. The admission authorities for six academies decided to adopt the same system.

12. The proposed new system, as described in the consultation papers published by the local authority when consulting on it, had three ability bands and the children are placed in these bands on the basis of Year 5 teacher assessment. The first band was described as "*exceeding national standards*", the second as "*working at national standards*" and the third as "*working towards national standards*". The first and second band would both have 40 per cent of the places allocated to them with the remaining 20 per cent being allocated to the third band.

13. If a school is oversubscribed then places are allocated to children in each band using the following oversubscription criteria to allocate places:

1. Looked after and previously looked after children.
2. Siblings of children who will still be on roll at the school.
3. Children with, or with an immediate family member with, medical or social needs.

4. Other children based on proximity to the school.

14. At the meeting it was apparent that all of the schools present supported the principle of using banding to obtain a balanced distribution of abilities in each school.

### **Consideration of Case**

#### Banding – Requirements of the Code

15. The Code sets out the overall principles behind setting admission arrangements in paragraph 14 which says *“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”* The Code also defines admission arrangements as *“the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.”*

16. In paragraph 1.47 the Code says *“Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website”*.

17. Paragraph 1.25 of 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.”*

18. In the subsequent paragraph 1.26, the Code says *“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.”* While paragraph 1.27 says *“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.”*

#### Banding – Publication and clarity

19. There is a clear requirement in paragraph 1.27 of the Code that admission authorities **must** publish information about any banding processes in their admission arrangements and paragraph 1.26 requires that entry requirement for banding **must** be fair, clear and objective. This is in addition to the wider requirements in paragraph 14 of the Code that arrangements **must** be fair, clear and objective. When I looked at the local authority’s website on 26 March I easily found the school admissions page. On this page there is a heading *“Admission arrangements”* under which is a link

*“Determined admission arrangements 2018/19”*. This leads to an eight-page document, the first five and three quarter pages apply to nursery and primary schools, the next one and a half refer to secondary schools and the remainder to post-16 admissions.

20. The only reference to banding in this document is in the second sentence in the section on secondary schools which says *“All Royal Greenwich community and voluntary controlled schools will divide this [published admission] number into three ability bands to provide a balanced intake of children with differing abilities.”* The remainder of the secondary school section sets out the published admission numbers for the four schools, oversubscription criteria and notes on co-ordination and appeals.

21. In response to my enquiries about where details of the banding system were published the local authority referred me to the 2017 composite prospectus. This document is not part of the 2018 arrangements and a parent or other person looking for the 2018 arrangements would not necessarily look at it. Even if they did look at it, the only additional information it provides to that found in the published arrangements for 2018 is that children are placed in bands according to teacher assessment and that places are distributed across the three bands in the ratio 40:40:20. There is no mention of the band descriptions found in the consultation paper.

22. In trying to understand how the banding system operated I looked at the papers put before the local authority’s cabinet on 15 February 2017 when the arrangements were determined. Appendix A of those papers is the eight-page document published as the 2018 arrangements on the local authority’s website which I referred to above. In the main body of the paper put before councillors this document is referred to as a *“summary”* of the arrangements.

23. Further exploration of the local authority’s website gave me the opportunity to *“View the secondary school offers map”*. Underneath an interactive map there is a note about banding. This note refers to the former system with five bands and testing, although it does say there will be three bands from 2017. I could find no more information than this on the local authority website and conclude that no parent, or anyone else, would be able to understand easily how places will be allocated from what was published by the local authority.

24. I find that the local authority has not met the requirements of paragraph 1.47 in the Code because the admission arrangements for 2018 published on its website are incomplete. Because the published arrangements are incomplete, they are not clear and so do not comply with paragraphs 14, 1.26 and 1.27 of the Code.

#### Banding – Objectivity

25. The local authority has told me that: *“The rationale behind our banding arrangements was to produce an intake [for each school] that is representative of the national ability range (paragraph 1.25c of the Code). This was based on Government predictions of 85% of pupils attaining the expected standard or above under the new [end of key stage 2 assessment]*

*framework. We have since confirmed that we recognise that the information obtained from the Year 5 teacher assessments shows that the distribution across the three bands is not in line with these earlier predictions.*" The local authority has not explained to me why it thought that there would be an even split between those meeting the standard and those exceeding it given that there was no suggestion by the Government that this would be the case nationally. Even if there had been such a suggestion, this would not seem a sound basis for assuming a particular split in one part of the country.

26. There appears to me to be a fundamental flaw in the local authority's banding structure. The banding process used before 2017 used norm-referenced assessment. Children were put in a ranked order by a test score and it would always be possible to identify the top 20 per cent and then the next quintile, and so on. Variations in the size and ability of each cohort taking the test, or the difficulty of the test, would not matter, it would always be possible to identify the quintiles. The score required to be in any quintile each year could be different as could the number of children within the quintiles each year. More sophisticated mathematical techniques involving standardisation could be used but there would always be five equally sized quintiles with clear boundaries.

27. The current banding process uses a criterion-referenced assessment. A common form of criterion referenced assessment is the driving test. There is no pre-set proportion of candidates who will pass the driving test, candidates are either competent to drive, or they are not. Examiners do not have to pass a previously agreed proportion of candidates. In this case, a child is either "*exceeding national standards*", "*working at national standards*" or "*working towards national standards*", there is no requirement for a pre-set proportion of children to be assessed as meeting each description. As cohorts of children vary in ability and number, it is not possible to predict in advance the proportion or how many of the children will be placed in each band although this is what the local authority has tried to do by setting the 40:40:20 distribution across the three bands.

28. With norm-referenced assessment, it is always possible to fit the children into pre-determined sized bands. With bands based on criterion-referenced assessment I do not consider it possible to pre-determine the size of the bands.

29. The Code requires that the banding process is objective. For a teacher of a Year 5 child to state that the child is either "*exceeding national standards*", "*working at national standards*" or "*working towards national standards*", the teacher must know what those standards are. It is also necessary for assessments made by different teachers in different schools to be consistent.

30. There is a national framework for assessment at the end of key stage 2. This is based on what children in Year 6 can do; for example, "*The pupil can write for a range of purposes and audiences using paragraphs to organise ideas*". In the DfE publication "*Interim teacher assessment frameworks at the*

end of key stage 2” published in July 2016, it says “*This statutory interim framework is to be used only to make a teacher assessment judgement at the end of the key stage following the completion of the key stage 2 curriculum* [emphasis by underlining added]. *It is not intended to be used to track progress throughout the key stage.*” This indicates that the national framework for Year 6 children is inappropriate for assessing Year 5 children, although this is what the local authority attempts to do.

31. It is clear why the use of the national framework for Year 6 assessment is inappropriate for Year 5 children. A child may not be able to demonstrate a skill in Year 5, but could demonstrate it by the end of Year 6 after a further year of education. It cannot be expected that children in Year 5 can do everything that is expected of them at the end of Year 6. Assessing children in Year 5 against Year 6 standards is bound to produce lower proportions of them attaining the expected levels. There are no national standards for Year 5 children to be assessed against and it is the national ability profile which the local authority has said it wants to reflect in the bands.

32. The key stage 2 teacher assessment framework has three levels of attainment in English writing which are: “*working towards the expected standard*”, “*working at the expected standard*” or “*working at greater depth within the expected standard*”, but only one level for English reading, mathematics and science which is “*working at the expected standard*”. The DfE publication “*2017 Assessment and Reporting Arrangements (ARA)*” explains how a combination of teacher assessment in English writing and test scores in English reading and mathematics are combined to produce the end of key stage assessment of children as “*meeting the expected standard*” and “*achieving above the expected standard*”. In contrast it is not clear how just teacher assessment is used to put a Year 5 child in one of the three bands. For example, if on the basis of teacher assessment at the end of Year 5, a child was “*working at greater depth within the expected standard*” in English writing, but not “*working at the expected standard*” in one or more of the other subject areas which band would they be put in? There would appear to be no guidance on this in the arrangements or elsewhere.

33. I asked the local authority how it ensured consistency of teacher assessment. It responded with a description of its statutory duty to moderate end of key stage 2 teacher assessment of English writing and the support it offers to schools for other moderation activities. The local authority has not provided me with any specific detail about how Year 5 teacher assessments are moderated. It appears to rely on transfer of understanding from one statutory moderation process in one subject area which is specific to Year 6 where there are national standards and optional moderation activities, which teachers may or may not participate in. I am not satisfied that this can give consistent teacher assessment across all subject areas in Year 5 where there are no national standards to be moderated against.

34. There are other considerations about the fairness and objectivity of the form of assessment for children who are new to a school, are in an independent school which does not follow the national curriculum or attend a school in an area where end of key stage 2 teacher assessment is not used in Year 5. I

would, however, only need to consider the implications for such children if I was satisfied that the assessment used was sound for the majority of children.

35. I find that the method of assessing children for the purpose of putting them in bands is not objective. The arrangements do not therefore comply with paragraphs 14 and 1.26 of the Code.

Banding – Fairness to specific groups

36. The referrers described perceived consequences of a mismatch between the proportion of places available within each band and the proportion of applicants meeting the description of that band. One referrer said *“Historically, a band 3 child [that is a child in the lowest 20 per cent] applying for Eltham Hill school would have been allocated a place if their home was up to 7.7km away. This year, children living half that distance from the school have missed out on a place because so many more children have been assessed as being in the lowest band. Looking at 2016 test data for Greenwich, nearly 40% of children are applying for 20% of the borough’s Y7 places.”* None of the other parties questioned these figures. Another referrer made a similar statement. The third referrer said *“the cohort [for admission in 2017] were teacher assessed as follows: 28.4% Band 1; 47.8% Band 2; 23.8% Band 3.”* and claimed that with 40 per cent of places being available for about 28 per cent of the children it was easier to find a school place in the first band and that this favoured high ability children.

37. I noted above that the local authority had referred to Government predictions that 85 per cent of children would attain the expected standard or above under the new end framework. The Department for Education (DfE) publishes school performance tables. These show that in 2016 across England 53 per cent of children met the expected standard when they left primary school and five per cent were achieving at a higher standard, a total of 58 per cent. Forty-two per cent must therefore be achieving below the expected standard, although this figure is not reported in the tables. For primary schools in Greenwich the figures were 64 per cent, 10 per cent and 26 per cent respectively. These figures and those for the three neighbouring boroughs are tabulated below.

Borough	Achieving at a higher standard %	Meeting the expected standard %	Not meeting the expected standard %
Greenwich	10	64	26
Lewisham	6	56	38
Bromley	9	67	24
Bexley	6	59	36
England	5	53	42

38. The proportion of places allocated to each band by the local authority is not representative of “*the national ability range*” nor of “*the ability range of children in the local area*”. These are two of the permitted forms of banding set out in paragraph 1.25 of the Code. The third is “*the full range of ability of applicants for the school(s)*”. As two of these schools are girls’ schools and a greater proportion of girls meet or exceed the expected standard than boys it is likely that the ability range of applicants for each of the schools could be different to either the national or local pattern.

39. I asked the local authority what proportion of the children in the 2017 intake had been assessed as being in each band. The figures provided by the local authority are shown in the table below. They do not reflect the 40:40:20 pattern of the bands, nor do they follow the pattern seen in the end of key stage 2 assessment of the previous cohort. It is in the third band that there is the best match between the pre-set band size, the end of key stage 2 assessment in 2016 and the 2017 teacher assessment.

Band	1	2	3	Not Known
Proportion %	25.9	45.1	21.4	7.5

40. While two of the referrers used the radius within which offers were made at one school to assess fairness it seems to me this could reflect on the geographical distribution of applicants, the size of the cohort, an outlying sibling or looked after child rather than the banding system.

41. I sought to assess whether children in any band were adversely affected by, or disproportionately benefit from, the mismatch between the proportion of places allocated to each band and the number of children assessed as being in that band by their teachers. In order to do so, I asked the local authority to tell me the proportion of children who were assessed as being in each band who were offered their first preference school. The figures supplied to me are shown in the table below.

Band	1	2	3
Offered First Preference %	65.6	64.0	61.9

42. From these figures it appears that in 2017 a child was slightly more likely to be offered a place at their first preference school if they are in the first band and least likely if they are in the third band. However, the differences are small and I cannot conclude from them that the banding system will lead to unfair outcomes for children assessed as being in any band in 2018.

#### Other Matters

43. 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.*” There is no mention of a waiting list in the published arrangements for 2018. For information about the waiting list the local authority referred me to the composite prospectus for 2017.

44. The composite prospectus for 2017 is not part of the 2018 arrangements. The process described for 2017 is that a waiting list is kept for each ability band until the end of August 2017 in the order of the oversubscription criteria. From September 2017 these three waiting lists are combined into a single waiting list, again in the order of the oversubscription criteria. I am led to understand that this is the process intended to be used for 2018.

45. Whether there are three waiting lists or just one, the requirements for them to be ranked in the order of the oversubscription criteria is met, however, the requirement of paragraph 2.14 to state in the arrangements the effect of adding a child to the list is not met.

46. I have considered the potential unfairness to a child who was top of the waiting list for say band one, who after the merger of the lists finds they are much lower on the combined list. However, this needs to be balanced against the need to identify which band a new child should be placed in, this would require a retrospective assessment of what the new child’s ability was in Year 5. As being top of the waiting list for any band would not necessarily mean the next available place would be offered, as the place available may be in a different band, I do not consider that any unfairness outweighs the practicalities and inaccuracy of retrospective assessment.

47. I find that the local authority has not made the statement about waiting lists required by paragraph 2.14 of the Code in its arrangements for 2018.

48. Paragraph 2.17 of the Code requires “*Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.*” I could find no information about the process for requesting admission outside of the normal age group in the published determined arrangements for 2018. On this matter the local authority again referred me to the composite prospectus for 2017. As stated above, the 2017 prospectus is not part of the 2018 admission arrangements, I find that the local authority has not met the requirement of paragraph 2.17 of the Code.

## **Summary of Findings**

49. I am in no doubt that the representatives I met of the schools support the principle of banding in order to produce an intake with a balance of ability. Banding is a permitted form of selection, but it must comply with the requirements of the Code.

50. The information published by the local authority about the process of banding in the determined arrangements for 2018, or anywhere else, does not

describe the bands or the assessment process. This renders the banding process, and the arrangements as a whole unclear and they do not comply with paragraphs 1.26, 1.27 and 14 of the Code.

51. The teacher assessment used to allocate Year 5 children to bands refers to national standards. The only national standards are those for children in Year 6. I have set out above the issues arising from using the assessment framework used for Year 6 children at the end of the key stage with children in Year 5. There is also no formal system to moderate between schools to ensure consistency of assessment across all schools. I find that the assessment is not objective and the arrangements do not comply with paragraphs 1.26, and 14 of the Code.

52. The structure of the bands is flawed and is not representative of the national ability range, the local ability range or the range of ability of applicants for the schools and so it does not comply with paragraph 1.25 of the Code.

53. While the banding process does not meet the requirements of the Code, the band that a child is put in does not appear to have a great effect on the likelihood of them being offered their most preferred school. No ability group appears to be favoured or disadvantaged by the system.

54. The local authority has not included details of its waiting list or the process of applying for places outside of the normal year group in its arrangements for 2018. It has therefore not met the requirements of paragraphs 2.14 or 2.17 of the Code.

55. At the meeting it was acknowledged that the arrangements did not comply with the Code. Indeed, the local authority had already recognised some of the issues identified above and was initiating the process of applying for a variation to its arrangements. This determination makes such an application unnecessary. A concern raised at the meeting was the timescale required to revise the arrangements to give effect to my determination.

56. Paragraph 3.1 of the Code says "*The Schools Adjudicator **must** consider whether admission arrangements referred to the Adjudicator comply with the Code and the law relating to admissions. The admission authority **must**, where necessary, revise their admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by **28 February** following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator. An Adjudicator's determination is binding and enforceable.*" I asked the local authority to write to me suggesting what it considered a suitable timescale for it to revise its arrangements. The local authority put forward 1 September 2017 and I am prepared to agree to this date.

## **Determination**

57. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for September 2018 determined by the Royal Borough of Greenwich for Eltham Hill School, The John Roan School, Plumstead Manor School and Thomas

Tallis School.

58. I find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

59. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 1 September 2017.

Dated: 26 June 2017

Signed:

Schools Adjudicator: Phil Whiffing