



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3809

**Objector:** The National Secular Society

**Admission authority:** The Lubavitch Multi-Academy Trust for Lubavitch Ruth Lunzer Girls Primary School

**Date of decision:** 16 November 2021

## Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by The Lubavitch Multi-Academy Trust for Lubavitch Ruth Lunzer Girls Primary School, Hackney.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I specify a deadline of 28 February 2022.

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by The National Secular Society (the objector) about the admission arrangements (the arrangements) for September 2022 for Lubavitch Girls' Primary School (full name Lubavitch Ruth Lunzer Girls' Primary School, the school) an academy primary school for girls between the ages of 4 and 11. The objection is to the lack of availability of the arrangements on the school's website, to the lack of clarity of the phrase "Jewish according to Halochah" which is included in the arrangements, to the

possible breach of equalities legislation which might accompany the interpretation of this phrase and to the use of a school application form.

2. The objector is a party to the objection. The local authority (LA) for the area in which the school is located is the London Borough of Hackney and is also a party to this objection. The other party to the objection is the school's religious authority, Chabad Lubavitch UK (the faith body).

## **Jurisdiction**

3. The terms of the Academy agreement between the multi-academy 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 (including the relevant Regulations) as it applies to maintained schools. These arrangements were determined by the Trust, which is the admission authority for the school, on that basis. The objector submitted its objection to these determined arrangements on 7 May 2021. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). At the time of the determination of the school's admissions arrangements and at the time the objection was made, the Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which means that the 2014 Code no longer has any effect.

5. The arrangements for the school as set out in this determination were determined on 17 February 2021. At that date the 2014 Code provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character).

6. The new Code which came into force on 1 September 2021 extended the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021, and this therefore means those determined for admissions in 2021 and those for admissions in 2022. There was no requirement for these variations to be approved by the Secretary of State and no reason for the school to send me its varied arrangements.

7. I have made my determination in this case on the basis that the admission authority would have varied its arrangements in order to comply with the new requirements set out above, but that it has awaited the outcome of this determination before considering all the

changes which it is under a duty to make in order to comply with the requirements of the Code and legislation.

8. Since the objection and the response to it were framed in terms of the 2014 Code, I shall use the references to it which have been made by the parties to the case, but will indicate if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

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

- a. a copy of the minutes of the meeting of the governing board of the Trust at which the arrangements were determined;
- b. a copy of the determined arrangements and religious affiliation form and the “school application form”;
- c. the objector’s form of objection dated 7 May 2021 and supporting documents;  
and
- d. the school’s (on behalf of the Trust) and the faith body’s responses to the objection and subsequent correspondence.

## The Objection

10. The objector set out the following complaints in its form of objection:

- (i) the school has contravened paragraph 1.47 of the Code because the arrangements were not available on its website following their determination;
- (ii) the arrangements contravene paragraph 1.8 of the Code because they do not explain what is meant when they say that “Priority in admissions will be given to children who are Jewish according to Halochah (Orthodox Jewish Law)”. It emphasised this by pointing out that the arrangements go on to say that “In the event of any dispute as to whether a child is Jewish, the decision of the Rabbinate of Orthodox Hebrew Congregations of the United Kingdom is final” without explaining the criteria which are used;
- (iii) since, in the objector’s words “Orthodox Jewish Law is sometimes interpreted to mean only those who are born to ethnically Jewish (i.e. not converted) mothers are considered Jewish” the objector considers, again in the objector’s words, “R (E) v Governing Body of JFS determined that using such criteria amounted to unlawful discrimination on the basis of race under the Race Relations Act 1976 (now replaced by the Equality Act 2010)”; and
- (i) the school’s application form, which asks for the ethnic background of the child, may also breach paragraph 1.8 of the Code. When I wrote to the parties, I said that although the objector had not said so, I also understood this to mean that the requirements of paragraph 2.4 of the Code concerning what may be asked for in a supplementary information form may be breached.

## Other Matters

11. When I looked at the arrangements, it appeared to me that the following matters also may not conform with the requirements of the Code:

- (i) Paragraph 1.8 of the Code because:
  - a. the statement that “The school will admit 30 girls to each year group from Reception to Year 6” is unclear. The normal year of admission to the school is the Reception year (Year R), and it is to these admissions that the Published Admission Number (PAN) applies; and
  - b. the arrangements refer also to 2020/21, which makes them unclear.
- (ii) Paragraph 1.37 of the Code because the arrangements give priority to looked after and previously looked after orthodox Jewish girls, and not to all girls “of the faith”, and
- (iii) Paragraph 2.17 of the Code in failing to make clear that all parents may seek a place outside the normal year group for their child.

## Background

12. The school became an academy school on 1 April 2018, its predecessor school having been a voluntary aided school with a federated arrangement (single governing body) with Lubavitch Boys’ Primary School and Lubavitch Senior Girls’ School. The successor schools of these three federated schools are the three schools which comprise the Lubavitch Multi-Academy Trust. The school’s website says that the school (referred to here as Lubavitch Junior Girls’ School, for reasons which are not clear to me) “is a strictly orthodox, small primary school for girls only, based in Stamford Hill, Hackney.”

13. The school’s admission arrangements state:

“Priority in admissions will be given to children who are Jewish according to Halochah (Orthodox Jewish Law).

In the event of any dispute as to whether a child is Jewish, the decision of the Rabbinat of Orthodox Hebrew Congregations of the United Kingdom is final.

Applications must be submitted on the Hackney Learning Trust [part of the LA] application form. Applicants wishing to be considered under priorities 1-4 and 6 should also complete the religious affiliation form.”

14. The religious affiliation form is a simple form which asks for essential details of the child and her parent(s) and contains a declaration that “my child is Orthodox Jewish” and that “the Dayan/Rabbi of Lubavitch Foundation.... will verify your information with the Rabbi of your Synagogue or community.”

15. The school’s website also provides what is referred to as an “application form” which contains the following:

- (i) "Ethnic Background: White-Orthodox Jewish/ White-British/ White-European/ White-Other"
- (ii) Father's occupation
- (iii) Mother's occupation
- (iv) Date of marriage
- (v) Particulars of family (other children and the school they attend)
- (vi) Medical information about the child
- (vii) The child's nationality and country of birth
- (viii) The pupil's family language
- (ix) Whether the family is in receipt of benefits, and if so which
- (x) Passport details (presumably of a parent).

16. The arrangements make the following statement:

"The school will admit 30 girls to each year group from Reception to Year 6 inclusive."

17. After stating that children "for whom the school has been named in an Educational Health Care Plan" (sic) will be admitted, the arrangements set out oversubscription criteria which refer to "the filling of places in years 1 to 6 in 2020/21", and which are, in summary:

- (i) Orthodox Jewish looked after or previously looked after children
- (ii) Orthodox Jewish girls with a sister (as defined) at the school
- (iii) Orthodox Jewish girls with a sister (as defined) at the school's nursery
- (iv) Other orthodox Jewish girls
- (v) Other looked after or previously looked after children
- (vi) Other Jewish girls
- (vii) Other girls.

18. During my consideration of this case, the school's Executive Headteacher corresponded with the Office of the Schools Adjudicator or behalf of the Trust. I refer therefore to "the school" but in the knowledge that the school was acting on the Trust's behalf. The school has told me that:

"The admissions authority fully appreciates the need for the school's admissions arrangements to be fully compliant with all aspects of the School Admissions Code and relevant legislation. Historically the school is and has been undersubscribed since the

inception of the Lubavitch MAT in April 2018 and for some years before that and so the oversubscription criteria have never actually needed to be applied and have not therefore been tested in practice. This therefore means that in accordance with the Code, all applicants have been offered a place.”

## Consideration of Case

### Publication

19. Paragraph 1.47 of the Code (paragraph 1.50 of the revised 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 displaying them for the whole offer year (the school year in which offers for places are made).”

When I looked at the school’s website on 11 May 2021, the most recent version of the school’s admission arrangements which I could find were those dated 2020/21. The school has told me that when it became aware of the objection it too checked its website and found that “the information on the website was not fully compliant with the Code.” Although the school has now ensured that the arrangements for September 2022 are published as required, it failed to comply with the Code since, having determined these arrangements on 17 February 2021, it did not publish them at once. I uphold this aspect of the objection.

### The clarity of the arrangements

20. Paragraph 1.8 of the Code says:

“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child.”

The school responded to the objector’s complaint that the arrangements did not make explicit what was meant by the phrase “according to Halochah (Orthodox Jewish Law)” or what the criteria were by which a child’s Jewishness was judged in the event of a dispute, saying that: “We acknowledge that if the terminology appears to the adjudicator to lack the clarity that is prescribed in paragraph 1.8 of the Code then this must be addressed by the admission authority. In doing so, we will comply with the Code and consult with the religious body; and we will have regard to any guidance from the religious body.”

21. The immediate issue here is the question of the clarity of the arrangements, in terms of what they say about the basis on which girls would be given priority (were the school to be oversubscribed) because they are “Jewish according to Halochah”. However, there is

also the matter of guidance from school's religious authority, Chabad Lubavitch UK, and I shall return to that below.

22. I have set out above all that the arrangements contain concerning the priority given to girls who are Jewish, which is that they are "Jewish according to Halochah (Orthodox Jewish Law)". These are referred to in the oversubscription criteria themselves, as I have described above, as "Orthodox Jewish girls". The arrangements contain nothing further by way of an explanation of what is meant. That is, they do not say what Orthodox Jewish Law says is required for a girl (in this case) to be considered to be an Orthodox Jew – which must also be different from being considered to be "Jewish" as priority (albeit lower priority) is also afforded to girls who are Jewish.

23. Paragraph 14 of the Code says:

"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

It is against this requirement that I need to consider the objector's view about the clarity of the arrangements. I take "parents" here to mean any parent, rather than a particular group of parents who might be more familiar than others with some matter that might be relevant, such as the precepts of a given denomination or section of a particular religious faith. I understand the Code to require that the admission arrangements for a school must be clear in themselves, such that an ordinary member of the public who might consider applying for a place for their child there can understand any means by which some children are given a higher priority for admission than others. My view is that the arrangements do not allow this, since it would not be possible for such a parent to look at the arrangements and understand the basis on which places at the school are to be allocated in the event of its oversubscription. I uphold this aspect of the objection.

24. I must now deal, albeit in passing, with the related and important matter of guidance from the faith body to the school's admission authority. I wrote to the school's religious authority on 18 June 2021 asking it to provide me with a copy of any guidance on admissions which it had provided to the school. Chabad Lubavitch UK replied on 24 June 2021 saying that:

"...no such guidance has been provided since the school's inception as an Academy in April 2018."

25. My reason for asking the religious authority for a copy of its guidance to the school's admission authority is that paragraph 1.9i) of the Code says that:

"...admission authorities....**must not:**

prioritise children on the basis of their own or their parents' past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)."

This matter was considered in the case of *Governing Body of the London Oratory v The Schools Adjudicator* [2015] EWHC 1012(Admin) in which the judge (Cobb J) said that:

“the phrase “laid out” means specifically ‘laid out’ in schools admissions guidance published by the religious authority – ie specifically provided for or authorised by such guidance.”

The effect of this is that if no activities of a religious nature have been specifically provided for or authorised by guidance from its religious authority, then a school with a religious character may not take any such activities into account in its admission arrangements.

26. I have said that the arrangements fail to set out what is required to be considered “Jewish according to Halochah”, because they do not specify those matters that might be taken into account by the admission authority for this purpose. I am grateful to the school for its stated intention of seeking guidance from its faith body, and to the latter for a further statement which it has made to me that:

“We are conferring with the admissions authority, which is reviewing their admission arrangements to ensure compliance with both the current and incoming new Admissions Code from September 2021, and will provide suitable guidance as the religious body as part of that review.”

It is important however that the school’s admission authority should be aware that in revising its arrangements to comply with this determination, the use of any criteria which were religious activities such as synagogue attendance, adherence to dress or dietary requirements or Torah study would fail to comply with the Code and admissions legislation unless they had been provided for in guidance published (that is to say, given in writing) by its religious authority.

#### Compliance with equalities legislation

27. When the school responded to the concern of the objector about compliance with equalities legislation, and my subsequent specific request that it provide comments on the admission authority’s interpretation of the phrase “according to Halochah”, it had the following to say: “.....naturally our review will ensure that the revised arrangements fully comply with equalities legislation....”.

28. The school has a PAN of 30, and the number of first preferences expressed for a place there in the last three years have been:

2019 3

2020 12

2021 12

The local authority website gives the total number of applications received in both 2019 and 2020 as 13. It seems to me that since the school has never needed to use its oversubscription criteria, it has not considered that it needed to give any consideration

to their meaning, and has simply admitted every child for whom a place has been sought. This, however, in no way absolves the school from its responsibilities under the Code and legislation. It must also have been clear to the school what the nature of the objector's concern was, since the objection form spelled out that if the arrangements gave priority to girls on the basis that their mothers were "ethnically Jewish (ie not [women] converted [to Judaism])", then this would amount to unlawful discrimination as determined by the Supreme Court in R (on the application of E) v Governing Body of JFS and the Admissions Appeals Panel of JFS and others [2009] UKSC 15 (the JFS case). I pause here to note that, in fact, the judgment in the JFS case was not concerned with the treatment of children of mothers who had converted in general (as referred to by the objector) but with the treatment of children whose mothers had converted under the auspices of a Jewish religious authority other than the Office of the Chief Rabbi (OCR). In that case, the school would have treated a child whose mother had converted under the auspices of the OCR as halachically Jewish, but would not have treated a child whose mother had converted under, say, a Masorti Jewish authority, as halachically Jewish. All that said, it is true that in the JFS case the Supreme Court found that by giving priority to children who were considered by the school and its religious authority to be halachically Jewish rather than on the basis of religious affiliation, membership or practice, the school was breaching equalities legislation

29. Returning to this case, I have been given no information that allows me to come to a view about how the school interprets this phrase, or rather, how it would do if it were ever to be oversubscribed. I have already said that the lack of clarity concerning the meaning of "according to Halochah" renders the arrangements non-compliant, and that the arrangements will need to be revised to rectify this fault. However, from the information which is available to me, I cannot conclude that the school has ever interpreted the phrase as the objector fears it may do (that is in the way found to be in breach of equalities legislation in the JFS case), and I do not uphold the objection that the school is in breach of equalities legislation. For the avoidance of doubt the school is bound by the precedent set in the JFS case and must ensure that its arrangements do not fall foul of the finding in that case.

#### The supplementary form

30. The school has again helpfully indicated its willingness to review its arrangements, saying that: "We will ...review the supplemental information form to ensure that in this respect also the provisions of the Code are adhered to." Paragraph 2.4 of the Code (in the 2014 version) says:

"In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for:

- a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);
- b) the first language of parents or the child;
- c) details about parents' or a child's disabilities, special educational needs or medical conditions;
- d) parents to agree to support the ethos of the school in a practical way;
- e) both parents to sign the form, or for the child to complete the form."

The 2021 Code adds that:

"Places **must** be allocated on the basis of oversubscription criteria only. An applicant **must not** be given additional priority solely on the basis of having completed a supplementary form."

Information which is prohibited by paragraph 1.9 of the Code is the child's previous school (unless a named feeder school), the occupational, marital, financial or educational status of the parents, reports from previous schools and the child's past or parents' past or current hobbies or activities (other than religious activities, if "laid out").

31. I have noted above that the main body of the arrangements asks applicants wishing to be given priority on the grounds of their Jewish faith to complete the religious observance form, and I have described its nature. The form which the objector has referred to in the objection is entitled "application form" and I have set out previously a number of matters, each of which would offend against one or more of the provisions in the Code which I have just referred to and which have no place in relation to the making of admissions to a school. This form also gathers parental consent regarding matters such as photographs of children and school trips, and in my view is simply wrongly described as an application form. It is much more likely that it is in practice a post-admission form, although even in this role I would have serious concerns about some of what is asked in terms of data protection, and I share the concern expressed by the objector that the form appears to imply that only those of certain ethnicities "cannot be prioritised, or cannot apply at all."

32. Although the school did not provide me with a copy of this form itself when asked for a copy of the admission arrangements, neither did it tell me when responding to the objection that it is not part of what parents provide alongside any religious affiliation form at the point of application. On that basis, it must be considered as part of the admission arrangements and I uphold the objection that it does not comply with the requirements concerning supplementary information forms in paragraph 2.4 of the Code.

#### Other matters

33. I have set out the contents of paragraph 1.8 of the Code previously. The school responded to my concern that the statement in the arrangements that: "The school will admit 30 girls to each year group from Reception to Year 6" was unclear by saying that it

understood that the PAN applied to Year R as the normal year of admission, and that it would make “the necessary amendment in accordance with the Code”. However, the statement which is to be found in the determined arrangements appears to say that 30 admissions will be made to each year group when in fact children transferring between years in a school are already on roll and do not need to be admitted, and when the basis for any further admissions in years other than the normal year of admission is not the PAN but whether such admissions would cause “prejudice”. The reference in the arrangement to “2020/21” is a further source of lack of clarity, since these arrangements apply to admissions in 2022/23. As determined, the arrangements fail to comply with paragraph 1.8 of the Code.

34. Paragraph 1.37 of the Code says:

“Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith, they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.”

Clause 2.M of the school’s supplemental funding agreement states that :

“The Academy is an Academy designated with a Jewish religious character.”

The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 make the effect of this designation plainer than paragraph 1.37 of the Code. Regulation 9 refers to children who “are of the same faith as that of the school in accordance with its designation”. This means that the school is required to give first priority to all looked after or previously looked after Jewish girls in its oversubscription criteria. However, the arrangements give this priority to relevant Orthodox Jewish girls, not to all such Jewish girls as is required. The arrangements are in breach of paragraph 1.37 of the Code.

35. Paragraph 2.17 of the Code (paragraph 2.18 of the 2021 Code) says:

“Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”

The arrangements contain no such statement, and so are in breach of this requirement of the Code.

36. Finally, the school’s arrangements state that applications “must be submitted on the Hackney Learning Trust [part of the LA] application form”. In fact, applications must be submitted on the common application form (usually on-line now) of the local authority in which the child lives. No doubt most of those seeking a place at the school will live in the area in which it is located which is Hackney. But some may not do so and the wording used

by the school is accordingly inaccurate, potentially misleading and unclear and hence a breach of the requirements of the Code.

37. I have considered carefully how long I should allow the Trust to remedy the breaches of the requirements relating to admissions set out in this determination. I have taken account of the fact that it is now November and parents will be considering their preferences for applications for 2022 before the deadline of 15 January 2022 for applications and that the school is in any event currently undersubscribed and unlikely to be oversubscribed for 2022. I have also taken into consideration that remedying the breaches will require the Trust to make significant changes to its arrangements and that it will need to discuss these with its religious authority and is likely to wish to consult at least its local authority. Against this background, I have decided to give the Trust until 28 February 2022 to make the necessary changes. This is also the deadline for determining the arrangements for 2023.

## Summary of Findings

38. I have set out in the preceding paragraphs why I have concluded that the school's arrangements fail to comply with the requirements of the Code (references as in the 2014 Code);

- i. at paragraph 1.47 in relation to their publication
- ii. at paragraph 1.8 in relation to a number of matters of clarity
- iii. at paragraph 2.4 concerning a supplementary information form
- iv. at paragraph 1.37 concerning the priority given to looked after and previously looked after girls, and
- v. at paragraph 2.17 concerning parents seeking admission out of the normal year group for their child.

I have also explained why I have not upheld that part of the objection concerning a possible breach of equalities legislation.

## Determination

39. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by The Lubavitch Multi-Academy Trust for Lubavitch Ruth Lunzer Girls Primary School, Hackney.

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

41. 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 specify a deadline of 28 February 2022.

Dated: 16 November 2021

Signed:

Schools Adjudicator: Dr Bryan Slater