



## DETERMINATION

<b>Case reference:</b>	<b>ADA2800</b>
<b>Objector:</b>	<b>The Fair Admissions Campaign</b>
<b>Admission Authority:</b>	<b>The Governing Body of Tauheedul Islam Boys' High School, Blackburn</b>
<b>Date of decision:</b>	<b>30 January 2015</b>

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the arrangements determined by the governing body of Tauheedul Islam Boys' High School, Blackburn, for admissions in September 2015.**

**I have also considered the arrangements in accordance with section 88I(5) of the Act and have found 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 make any remaining revisions to its admission arrangements as quickly as possible.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an a objection has been referred to the Adjudicator by the Fair Admissions Campaign (the objector) about the 2015 admission arrangements (the arrangements) for Tauheedul Islam Boys' High School (the school), an academy free school for boys aged 11 to 18 years. The objection relates to the wording of both criterion 2 and 3 that parents/carers must be members of the mosque, disadvantaging applicants with a single parent and that the 2014 admissions policy was not on the school's website at the time the objection was made.

### **Jurisdiction**

2. The terms of the funding agreement between the Tauheedul Free Schools 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.

3. Although the Funding Agreement does not identify the admission authority of the school, the school is part of Tauheedul Education Trust which is a multi-academy trust. The Corporate Governance and Accountability Handbook of Tauheedul

Education Trust contains the scheme of delegation which shows that “*setting an admissions policy*” is the responsibility of the local governing body (governing body). The governing body is therefore the admission authority and on that basis determined the 2015 arrangements on 28 April 2014, which is after the deadline of 15 April specified in the School Admissions Code (the Code) at paragraph 1.46. Although the governing body did not meet the deadline specified in the Code I consider that the 2015 arrangements have been lawfully determined, and that I have jurisdiction.

4. The objector submitted the objection to the 2015 determined arrangements on 30 June 2014 and I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider this objection. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

5. In considering the objection I have had regard to all relevant legislation and the Code.

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

- a. the objection dated 30 June 2014;
- b. a copy of the 2015 determined arrangements downloaded from the school's website on 4 August 2014 (the 2014 arrangements were not on the website);
- c. the submission of 18 August 2014 from Blackburn with Darwen Borough Council (the local authority), together with supporting documentation including a copy of the 2014 composite prospectus for secondary school admissions;
- d. the school's response to the objection sent on 21 August 2014, together with supporting documentation including the minutes of several governors' meetings and a revised version of the 2015 arrangements;
- e. comments from the Association of Muslim Schools UK (the faith body) on 29 August 2014;
- f. a copy of the funding agreement made on 10 September 2012;
- g. a further response from the school dated 2 December 2014 providing further information about membership of the named mosques;
- h. further information from the local authority about admissions data;
- i. a copy of the 2015 composite prospectus downloaded from the local authority's website on 28 November 2014; and
- j. further information sent by the school on 21 January 2015 including supporting documents including the Corporate Governance and Accountability Handbook of Tauheedul Education Trust.

7. I arranged a meeting on 12 January 2015 (the meeting) with representatives of the school, the trust and the local authority. The faith body was invited to the meeting but did not to attend. Correspondence was also submitted after the meeting and this has been copied to the school, the local authority and the objector as

appropriate. I have considered the representations made to me at the meeting and the documentation and correspondence submitted before and after the meeting.

## **The Objection**

8. The objection relates to the wording of both criterion 2 and 3 of the oversubscription criteria that parents/carers must be members of the mosque, disadvantaging applicants with a single parent which may not comply with the Code at paragraph 1.8. In addition, the 2014 admissions policy was not on the school's website at the time of the objection, in contravention of the Code at paragraphs 1.47 and 2.14.

## **Background**

9. The funding agreement confirms that the school is a Muslim academy free school in Blackburn which was founded by the Tauheedul Islam Faith, Education and Community Trust. The school opened on 4 September 2012 for boys aged 11 to 18 years, with a published admission number (PAN) of 100 and a planned capacity of 700, to include a sixth form of 200 places.

10. The school describes itself on its website as *"an 11-18 outstanding, progressive, Muslim faith free school [which promotes] traditional British values and welcome applications from students of all faiths and none."* At the meeting the school confirmed that the first sixth form intake would be delayed until September 2018. In an email dated 21 January 2015, the school supplied a copy of the Instrument of Government which states that the *"school is to be conducted as an Islamic school in accordance with the ethos and values of the Deobandi Hanafi Tableeghi school of thought."*

11. The school is designated by the Secretary of State under section 69(3) of the Act as having a Muslim religious character, and as such, is exempted by Schedule 11 to the Equality Act 2010 (the Equality Act) from the requirement in section 85 of the Equality Act not to discriminate on the grounds of religion in terms of the admission of pupils to the school. The school is therefore permitted by Schedule 11 of the Equality Act to prioritise applicants for a place at the school on the basis of faith. The funding agreement states that priority in this academy free school is given to 50 per cent of families who are part of the communities served by four mosques as named in the oversubscription criteria below, and the remaining 50 per cent of the intake are boys from across the local community without reference to faith.

12. The 2015 determined arrangements published on the school's website at the time of the objection say that if there are more applications than the 100 places available in Year 7, then after any boys with a statement of special educational needs and/or an individual pupil resourcing agreement which names the school have been admitted, places will be allocated according to the published oversubscription criteria which I have summarised below:

1. Looked after boys (in public care) of the Muslim faith or a Muslim boy who was previously looked after;
2. Boys whose parents are members of, or women who receive the

membership benefits of, Masjid-e-Tauheedul Islam;

3. Boys whose parents are members of, or women who receive the membership benefits of, Masjid al Hidayah, Masjid-e-Irfan and Masjid-e-Anisul Islam;

4. Boys with a brother who is a pupil already attending, or was a former pupil of the school since it was established in September 2012;

5. Other looked after boys (in public care), or a boy who was previously looked after;

6. Boys with exceptionally strong special medical or social circumstances;

7. Sons of staff who have been employed at the school for two or more years at the time of application or who have been recruited to fill a vacant post for which there is a demonstrable skill shortage; and

8. Boys who live nearest to the school, measured using the local authority's computerised mapping system.

13. To apply for a Year 7 place for admission in September 2015, parents are required to complete and return the common application form (CAF) to their local authority by 31 October 2014, the national closing date for secondary school applications. In addition, for applicants to be eligible for consideration under criterion 2 or 3, parents/carers must be able to provide evidence/written confirmation of their membership/ eligibility for membership benefits of the named mosques from at least January 2013. The four mosques specified in criteria 2 and 3 are attached to the Deobandi Hanafi Tableeghi school of thought, and are part of the trust which founded the school.

14. The arrangements also state that the maximum number of boys who can be admitted under criteria 2 and 3 is 50 (which is 50 per cent of the total intake of 100 boys). If there are fewer than 50 applicants to whom criteria 2 and 3 apply, the remainder of places will be offered to applicants in accordance with the remaining oversubscription criteria as listed above. If there are more than 50 applicants to whom criteria 2 and 3 apply, those who cannot be offered places under those criteria will then be considered under whichever of the remaining criteria is applicable to them.

15. The local authority provided historical admissions data for the last three years, which I have summarised in the table below, and it is clearly evident that the school is oversubscribed by families expressing the school as their first preference.

	total number of applications	1 <sup>st</sup> preferences	PAN	SEN	Oversubscription criteria							
					1. Muslim P/LAC	2. 1 <sup>st</sup> named mosque	3. Other named mosques	4. Sibling	5. Other P/LAC	6. Social/ Medical need	7. Sons of staff	8. Proximity to school
<b>2012</b>	204	127	75	3	0	27	10	2	0	n/a	n/a	33 (last place 0.653 ml from school)
<b>2013</b>	286	174	100	3	0	31	19	3	0	n/a	n/a	44 (last place 0.621 ml from school)
<b>2014</b>	288	149	100	5	0	29	20	11	0	1	1	33 (last place 0.569 ml from school)

### Consideration of Factors

16. The objection was in two parts. First, that criteria 2 and 3 disadvantage applicants with a single parent. The wording of both criteria relates to *“boys whose parents are members of, or women who receive the membership benefits of ...”* specified mosque(s). It seems to me that the use of the plural words *“parents”* and *“women”* is because of the use of the plural word *“boys”*.

17. I note that men may be either foundation or associate members of the specified mosques where they worship regularly, but women usually pray at home and may have membership rights instead. I have been assured by the school in their email of 2 December 2014, and again during the meeting at the school, that there is no fee for foundation or associate membership of any of the mosques. It seems to me that an applicant from a single parent family where the parent is the mother would not have been eligible for consideration of a faith-based place but for the clause specifically including *“women in receipt of membership benefits.”* The local authority commented in its submission of 18 August 2014 it is *“satisfied that the form of wording is appropriate and does not cause a detriment or disadvantage to single parents.”*

18. It seems to me that most applications are likely to families with one applicant son. Therefore, if the wording in criteria 2 and 3 were considered in the singular form, it could be interpreted as *“a boy whose parent is a member of, or a woman who receives the membership benefits of”*...a specified mosque, and as such, would not be disadvantageous to an applicant from a single parent family.

19. However, I consider that the wording might also be interpreted as *“a boy (singular) whose parents (plural) are members of, or a woman who receives the membership benefits of”*...a specified mosque. In this case, it might appear that both parents would have to be members of the specified mosque, but as only men can be members, this statement in practice would mean that to be eligible for criterion 2 or 3, the applicant should either have a father who is a member of the mosque, or a

mother who receives membership benefits, which again would not, in practice, disadvantage the son of a single parent.

20. The school asserts that the arrangements would not have disadvantaged any boy from a single parent family, and that there has never been any intention to do so. However, the school assumes that the objection arose because of unintended ambiguity related to *“women who receive the membership benefits of ...”* the named mosques which was stated in criteria 2 and 3 but was omitted in the explanatory note for those criteria. The school states that the omission was an administrative error which has now been rectified to ensure there is no longer any *“inconsistency or ambiguity in this matter.”* The school also notes that the arrangements had previously been scrutinised by various bodies including the local authority and the faith body but none of these had noticed and advised the school of the need to remedy the unintended administrative error.

21. Although it is arguable whether the use of the plural word “parents” in criteria 2 and 3 would exclude or disadvantage any applicant with a single parent, having considered the evidence available to me, I am not persuaded that a boy from a single parent family would be disadvantaged and therefore I consider that the wording does not breach paragraph 1.8 of the Code and so I do not uphold this part of the objection. I acknowledge that during the meeting the school agreed to revise the wording so as to use the term *“parent(s)/carer(s)”* instead of *“parents”* to avoid any possibility of a single parent misinterpreting the criteria.

22. The second part of the objection was that the 2014 admissions policy was not on the school’s website at the time the objection was made, contrary to paragraphs 1.47 and 2.14 of the Code. The Code at paragraph 1.47 states that *“once admission authorities have determined their admission arrangements, they **must**... publish a copy of the determined arrangements on their website displaying them for the whole offer year (the academic year in which offers for places are made).”* Furthermore, paragraph 2.14 of the Code requires that an *“admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission...”*

23. In its response sent on 21 August 2014, the school said that 2014 admissions policy had been *“on the school’s website for virtually the whole of the 2013/14 academic year [but had been] removed accidentally from the website when the 2015/16 policy was uploaded in preparation for the implementation of the admission arrangements for the September 2015 intake and the school’s website was being updated in time for the start of the 2014/15 academic year. This unfortunate and accidental removal of the policy coincided with the relocation of the school ... during the summer recess. Unfortunately, during this hectic and busy period, this oversight was not picked up [but] has now been rectified.”*

24. I explained in the meeting that the 2014 arrangements should have been displayed for the whole of the academic year 2013/14. Furthermore, the 2014 arrangements should also have been available on the school’s website for the whole of the autumn term 2014 as the waiting list must be based on the oversubscription criteria in these arrangements. The 2014 determined arrangements were not available on the school’s website when the objection was made on 30 June 2014,

and were still not available on 4 August when I downloaded the 2015 arrangements from the school's website, and therefore, as the 2014 arrangements were not available for the whole offer year, in contravention of paragraph 1.47 of the Code, I uphold this part of the objection.

25. However, I acknowledge that the school must have rectified the issue by 18 August 2014 as the submission by the local authority of that date notes that the omission "*has now been rectified.*" Therefore I do not consider that there was a breach of the Code at paragraph 2.14 as the issue had been rectified before the start of autumn term 2014.

### **Other matters**

26. In reviewing the 2015 admission arrangements I noticed that there were other aspects of the admission arrangements that appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code.

27. In the meeting on 12 January 2015 I raised with the school several points which appeared to me to contravene the Code and could be amended immediately by the school as a variation permitted by the Act and as detailed at paragraph 3.6 of the Code, so as to comply with the mandatory requirements of the Code. Paragraph 14 of the Code requires that the admission authority **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. I raised the following points:

- a. The school accepts that in determining the arrangements on 28 April 2014, this was after the deadline of 15 April specified in the Code at paragraph 1.46. The governing body may wish to review its meetings schedule to ensure that, in future, the determination of admissions arrangements complies with the deadline specified in the Code;
- b. There is a 50 per cent limit on the number of boys who can be prioritised on the basis of faith, and the arrangements state that "*only 50% of the total intake can be admitted from criteria 2 and 3.*" However, it is the first three criteria which prioritise on the basis of faith, not just criteria 2 and 3, and the wording of the arrangements should be adjusted accordingly;
- c. Criterion 1 prioritises "*Looked after boys (in public care) of the Muslim faith or a Muslim boy who was previously looked after...*" However, the term "*looked after*" is not limited to children "*in public care*" as it also includes children being provided with accommodation by a local authority in the exercise of its social services functions. As the school has correctly explained the term "*looked after*" in Note 1, the reference to "*(in public care)*" in criterion 1 should be removed to avoid confusion; and
- d. The arrangements do not mention a SIF but there is a statement in the notes that "*evidence/written confirmation of membership/eligibility for membership benefits will be requested from the relevant mosque.*" However, without a SIF it was not clear from the arrangements how the school would be able to identify which applicants may qualify for one of the faith-based criteria. At the meeting on 12 January 2015 the local authority

confirmed that the common application form includes a question asking parents for information about mosque membership or membership benefits. I am persuaded that there is no need for a SIF as the CAF provides all the information required.

28. During the meeting I asked about the second version of the 2015 arrangements that had been sent by the school and had been published in the local authority's 2015 composite prospectus. This second version of the arrangements was very different from those published on the school's website when the objection was made. For example, the number of oversubscription criteria has nearly doubled, increasing from eight to 14, and the number of faith-based criteria for the 50 per cent of places available has more than doubled, from three to seven.

29. In the meeting on 12 January 2015, the school said that the revised version had been produced in August 2014 to respond to the points raised in the objection and other matters. In an email dated 21 January 2015, the school sent a copy of the minutes of an extraordinary meeting of the governing body held on 18 August 2014 which records that the revised arrangements "*provided greater clarity*" and were approved. However, it seems to me that the revisions have gone beyond what was necessary to address the concerns identified in the objection.

30. The Code is clear at paragraph 3.6 that "*once admission arrangements have been determined for a particular academic year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements.*" I consider that the increase in the number of oversubscription criteria generally, and the increase in faith-based criteria specifically, is a significant revision which is also beyond that required by paragraph 3.6 of the Code. Furthermore, I am not persuaded that the increase in the number of oversubscription criteria has made the allocation of places any clearer. Accordingly, I conclude that such a significant variation should only have been made following the usual consultation process before seeking to introduce the changes in the admission arrangements for the following year.

## **Conclusion**

31 At the time the objection was made, some aspects of the school's arrangements for admissions in September 2015 did not conform with the requirements relating to admissions for the reasons stated in the paragraphs above. As I have upheld some but not all of the concerns raised by the objector, I partially uphold the objection.

32. In addition, while I was reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code.

## Determination

33. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the arrangements determined by the governing body of Tauheedul Islam Boys' High School, Blackburn, for admissions in September 2015.

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

35. 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 make any remaining revisions to its admission arrangements as quickly as possible.

Dated: 30 January 2015

Signed: 

Schools Adjudicator: Ms Cecilia Galloway