



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3361

Objector: An individual

Admission Authority: The governing body of Yesodey Hatorah Senior Girls School, Stamford Hill, London

Date of decision: 8 August 2018

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 2019 determined by the governing body for Yesodey Hatorah Senior Girls School, Stamford Hill, in the London Borough of 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 two months from the date of the determination in relation to the matters listed in paragraph 60 and a deadline of 28 February 2019 in relation to the matters listed in paragraph 61.

The referral

- Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by an individual (the objector), about the admission arrangements (the arrangements) for Yesodey Hatorah Senior Girls School (the school), a voluntary aided school with a Jewish religious character for girls, for September 2019. The objection is to aspects of the faith-based oversubscription criteria in the arrangements.

2. The local authority for the area in which the school is located is the London Borough of Hackney. Its education service is known as Hackney Learning Trust. The local authority is a party to this objection. Other parties to the objection are the objector, the governing body of the school and the Rabbinate of the Union of Orthodox Hebrew Congregations (UOHC), which is the school's religious authority.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted their objection to these determined arrangements on 2 February 2018. The objector has asked to have their identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and, with the exception of the part of the objection concerning feeder schools, it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. the objector's form of objection dated 1 February 2018 and subsequent correspondence;
- b. the school's response to the objection, supporting documents and subsequent correspondence;
- c. the response of the Hackney Learning Trust to the objection and subsequent correspondence;
- d. the response of the UOHC to the objection and the guidance issued by the religious authority to the school;
- e. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
- f. confirmation of when consultation on the arrangements last took place;
- g. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
- h. a copy of the determined arrangements.

6. I have also taken account of information received during a meeting I

convened on 5 July at the school that was attended by representatives of the governing body, the local authority and the religious authority. In order to remain unknown to the school, the objector did not attend.

The School

7. The school opened as a voluntary aided school in September 2005 replacing an independent school. The school and its predecessor were established by the Orthodox Charedi Jewish community in Hackney. Since its opening, the school has provided for girls aged 11 to 16. In recent years, its published admission number (PAN) has been 80. In March 2018, following a period of consultation, the governing body decided to change the age range of the school by two years, in order to admit girls at the age of nine, from September 2019. There is no statutory process to follow for such an alteration. A consequence of this decision was a proposal that the PAN should be reduced to 65, also from September 2019, in order to accommodate the additional year groups within the physical capacity of the school. This reduction of the PAN was determined in the arrangements to which this objection refers.

The Objection

8. The objector believes that the arrangements are in breach of the requirements relating to admissions in a number of ways, one of which was held not to be within my jurisdiction. The matters within my jurisdiction are as follows:

- whether the oversubscription criteria are “*reasonable, clear [and] objective*”, as required by paragraph 1.8 of the Code and how it can be confirmed that applicants meet the religious practice requirements;
- whether the arrangements give priority according to the occupational status of parents applying, which would be contrary to paragraph 1.9 (f) of the Code, specifically in relation to the use of the internet at work; and
- whether the arrangements are in breach of equalities legislation in any way.

9. The objector also argued that a private primary school is used “*as an unofficial feeder*”, contrary to paragraph 1.9 (b) of the Code, which states that admission authorities “**must not** take into account any previous schools attended, unless it is a named feeder school”. I did not consider this to be within my jurisdiction as the arrangements give no priority on the basis of any previous school attended. My jurisdiction is limited to reviewing the arrangements themselves. I made this clear in a letter to all of the parties to the objection, dated 22 May 2018.

Other Matters

10. In reviewing the arrangements, I noted that the closing and offer dates are those used nationally for primary schools. It appeared to me that the

extension of the school's age range would classify it as a "*Middle deemed Secondary School*." I was also concerned as to whether the consequent reduction in the school's PAN met the requirement of fairness in paragraph 14 of the Code.

11. I was unable to find the arrangements for September 2019, as originally determined, on the school's website, as required by paragraph 1.47 of the Code.

Background

12. For the past two years and for entry in September 2018, the school has been undersubscribed. 52 girls were admitted in 2016 and 64 were admitted in 2017. For 2018, parents of 61 girls made the school their first preference. In each case, these figures are lower than the proposed PAN for September 2019 of 65.

13. The oversubscription criteria for 2019-20, as originally determined by the governing body on 20 February 2018, can be summarised as follows:

- (i) Charedi Jewish girls who are looked after or previously looked after children.
- (ii) Charedi Jewish girls with sisters at the school.
- (iii) Other Charedi Jewish girls.
- (iv) Other girls who are looked after or previously looked after children.
- (v) Other girls.

Distance from the school is used to determine priority within each criterion. If distances are equal, a tie-breaker of random allocation is used.

14. The arrangements set out in some detail the meaning of the term "Charedi Jewish girl," which is,

"a girl who is a member of a Charedi family that lives in accordance with Charedi principles and ethics as prescribed by the Rabbinate of the Union of Orthodox Hebrew Congregations."

It is stated that "*The Charedi principles and ethics require as follows:*"

"Charedi homes do not have TV or other inappropriate media, and parents will ensure that their children will not have access to the Internet and any other media which do not meet the stringent moral criteria of the Charedi community. Families- mothers and girls, will dress at all times in accordance with the strictest standards of Tznius (modesty) as laid down by the Rabbinate of the Union of Orthodox Hebrew Congregations. Fathers, where applicable, overall mode of dress style and colour will be in accordance with the Chareidi ethos of the school; must belong to a Chareidi synagogue and attend daily prayers as well as all prayers on Shabbos and Yom Tov. Likewise

attend synagogue appropriately dressed i.e. jacket and hat. Set times for daily Torah study sessions are an essential part of a chareidi family environment.”

[I note that two different spellings (*Charedi* and *Chareidi*) are used.]

15. The arrangements go on to state,

“the ethos of the Union of Orthodox Hebrew Congregations expects parents / guardians to refrain from following trends which contradict the spirit of modesty and holiness.”

A set of requirements follows, grouped into eight categories. I shall refer to these as “*The modesty and holiness requirements*.” As originally determined by the governing body, these requirements are set out in full below (with the Hebrew characters removed):

1. SKIRTS

Dresses and skirts may not be shorter than 10cm / 4 inches below the knees, a length that ensures the knees remain covered at all times.

Very long skirts are not accepted within our Charedi community and as such are forbidden.

Very straight or figure hugging skirts are forbidden.

A slit in a skirt or dress is absolutely forbidden even if it is completely below the knee.

2. SHEITELS

Sheitels that fall below the base of the neck or do not conform in any other way to the halochos are forbidden to be worn.

Hatfalls and Bandfalls are not in keeping with the standards of modesty. If snoods are worn because of rabbinical guidance ones hair must be completely covered.

3. COLOURS

The wearing of flashy or very brightly coloured clothing is forbidden.

4. NECKLINES

Blouses, jumpers or dresses must fit closely to the neck. This ensures that:

- a. *The shoulders*
- b. *The top of the spine and downwards*
- c. *The collar bone and below are covered*

5. *SLEEVES must cover the elbows at all times*

6. *MAKE-UP should be discreet*

7. *CASUAL CLOTHES*

Casual garments and footwear, denim or other clothing made from similarly ‘trendy’ fabrics e.g. leather and lycra, are related to the casual free way of life of the street culture and as such are not permitted.

8. *TELEVISION / INTERNET*

The television is absolutely forbidden. Access to the internet is forbidden. Likewise, other unsuitable home entertainment is strictly not allowed by the Union.

16. In the originally determined arrangements, parents wishing their daughter to be considered under one of the first three oversubscription criteria are required to provide a Supplementary Information Form (SIF) confirming that they meet the “*Charedi criteria*.” A second form, to be sent to the UOHC, sets out in full both the “*Charedi principles and ethics*” and “*The Modesty and Holiness Requirements*” that I have quoted above in paragraphs 14 and 15 respectively. It is clear that adherence to both sets of requirements by parents and guardians is necessary to meet the “*Charedi criteria*” in order for their daughter to be considered under the first three oversubscription criteria. Parents and guardians are asked to sign the second form to confirm that they

“have read and believe in the guidelines contained in this document and confirm that we meet these standards.”

The form is then to be sent to the UOHC. A detachable part of the form asks for a signature from a member of the Rabbinate of the UOHC, confirming that the “*the parent(s) of the child named above meet the criteria as prescribed by the Rabbinate of the Union of Orthodox Hebrew Congregations*.” This part of the form is to be submitted to the school with the SIF.

Consideration of Case

17. The parts of the objection that are within my jurisdiction relate to the requirements that applicants must meet in order to be considered under the first three oversubscription criteria. In correspondence, the school refers to these as “*religious practice requirements*.” Paragraph 1.9 (i) of the Code prohibits admission authorities from prioritising children in their admission arrangements,

“on the basis of their own or their parents’ past or current hobbies or activities.”

The sub-paragraph goes on to outline an exception to this prohibition for schools that have been designated as having a religious character. These schools,

“may take account of religious activities, as laid out by the body or person representing the religion or religious denomination.”

Yesodey Hatorah School has a religious designation and its religious authority is the UOHC.

18. The registrar of the Rabbinate of the UOHC explained to me in correspondence that the Rabbinate has, over time, published rabbinical rulings *“relating to modesty in dress, types of suitable entertainment, technology etc.”* Examples were provided. These rulings, he says,

“relate to how members of our congregations are expected to conduct themselves if they wish to be identified with the Charedi Community. All schools under the auspices of the Rabbinate of the UOHC are expected to adhere to these principles.”

The registrar confirmed that the Rabbinate had been consulted on and approved the wording describing required Charedi religious practice set out in the school’s admission arrangements.

19. I am satisfied that the religious practices and the requirements relating to clothing and entertainment in the arrangements can be considered to be *“religious activities”* and that these have been laid out by the school’s religious authority, as required by paragraph 1.9 (i) of the Code. In correspondence, the school’s chair of governors made the following statement,

“The issue for this adjudication is not the merits of the religious practice requirements set by the UOHC but whether they are sufficiently clear to a parent who might meet those requirements, and whether they are fairly and objectively applied in practice through use of the SIF.”

I am in broad agreement with this opinion.

20. I turn now to the objection itself. It has a number of strands that I will consider in the order set out in paragraph 8 above.

Are the oversubscription criteria reasonable, clear and objective and can it be confirmed that applicants meet the religious practice requirements?

21. The objector argues that the *“rules are not reasonable, clear, objective”* as required by paragraph 1.8 of the Code. This paragraph states that,

*“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.”*

22. This part of the objection appears to me to have two distinct elements:

- (i) examples are cited from *“The modesty and holiness requirements”* that the objector believes do not meet the Code’s requirements of reasonableness, clarity and objectivity; and

- (ii) it is argued that the rabbi signing the form to confirm that the parent(s) meet the “*Charedi criteria*” would not be able to “*monitor or check*” that some aspects of the requirements were being fulfilled.

I shall consider each of these elements in turn.

23. The objector argues that “*there is so much uncertainty that parents aren’t clear when they apply to the religious authority if their daughter will qualify for a place*” and goes on to raise the following points and queries in relation to “*The modesty and holiness requirements*”:

- whether the occasional wearing by the child’s mother of a wig (sheitel) that is 2cm too long would “*disqualify the child*”;
- how it is determined objectively that make up is “*discreet*”;
- the prohibition of denim has no basis in Jewish law;
- “*unsuitable home entertainment*” is not defined;
- how a parent could determine whether a particular shoe is “*trendy*”; and
- how a “*very long skirt*” is defined.

24. I should point out that the objector is wrong to refer to parents applying “*to the religious authority*.” Applications for places at voluntary aided schools are made to the governing body. If the application is for a place at the normal year of entry, this will be through the local authority’s co-ordinated scheme. The religious authority’s role is to confirm, alongside the SIF, that the applicant meets the religious practice requirements set out in the arrangements. However, the objector is right to emphasise the importance of parents having a clear understanding of those requirements. Paragraph 1.37 of the Code states,

“*Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*”

Indeed, in a brief response to the objection, the local authority referred to this paragraph and commented,

“*Some parents may be unclear about how the definition of Charedi, as drafted, is applied and we would support a clearer definition so that parents are left in no doubt about whether they meet this priority.*”

25. I agree with the objector and the local authority that some parts of “*The modesty and holiness requirements*” are not sufficiently clear that parents can “*easily understand*” if they meet these requirements. This part of the arrangements makes use of several adjectives and adjectival phrases to explain what the requirements entail. The objector refers to the following: “*discreet*”, “*unsuitable*”, “*trendy*” and “*very long*”. I would add “*flashy*” (found in requirement 3) to this list. I consider that the use of such words and phrases does not allow for a single, objective understanding. Without clearer

explanation, parents could well have quite different views, for example, of what is meant by “*discreet*” make up or “*unsuitable*” entertainment. This is contrary to what the Code requires in both paragraphs 1.8 and 1.37.

26. Furthermore, the objector’s query (made in respect of the wearing of sheitels), regarding an “*occasional*” breach of the modesty requirements is, in my view, an important one. The arrangements do not state any period during which the requirements must have been adhered to and what the consequences are if family members fall short of them from time to time. I recognise that the requirements describe the ongoing expectations of membership of the Charedi community but, in the absence of further explanation, I consider that the consequences of occasional lapses are not made sufficiently clear so that parents can “*easily understand*” if they meet those requirements. In this respect the arrangements are also in breach of paragraph 1.37 of the Code.

27. Finally, the objector states that the prohibition of the wearing of denim has no basis in Jewish law. Whether or not this is the case, the prohibition is laid out as a religious activity by the school’s religious authority and therefore is not of itself in breach of the Code’s requirements.

28. The governing body responded very constructively to this and other aspects of the objection. It formulated a revised set of arrangements, which have been amended further following my meeting at the school. These arrangements, which are proposed, but have not been determined, include the following changes:

- the removal of any reference to very long skirts;
- the removal of the word “*flashy*” in respect of the colours of clothing;
- the replacement of “*discreet*” in respect of make up with “*conservative*”;
- confirmation that “*trendy*” fabrics “*means leather and lycra*”, rather than these being examples; and
- explanation that “*unsuitable*” home entertainment means “*any entertainment accessed online via any computerised device*.”

29. With the exception of the word “*conservative*”, which in my view is no more objective than “*discreet*”, I consider that these proposed changes remove much of the lack of clarity from the religious practice requirements. The concerns I expressed in paragraph 26 do not yet appear to have been addressed.

30. In the second part of this aspect of the objection, the objector argues that it is not possible for the rabbi to have sufficient information in order to sign the form that confirms that the parent(s) of the child meet the religious practice requirements. There are, the objector says, several matters that the rabbi would be unable to monitor or check, including daily prayers and Torah study, the use of internet-enabled phones and the clothes worn whilst on holiday.

Reference is made to the determination of the adjudicator in the case of another Jewish school, Hasmonean High School (ADA 2990), where, in the objector's words, it was

"clarified that Rabbis cannot be asked to opine on matters that they have no idea about."

31. The Hasmonean case was specifically about the laws of family purity, but I consider that similar considerations apply to the present case. The school's oversubscription criteria must meet the Code's requirement of objectivity in paragraph 1.8 (as explained above, I have found that, as yet, they do not in every respect). The Code also requires, in paragraph 14, that "*the practices...used to decide the allocation of places*" must be "*fair, clear and objective.*" The rabbi's confirmation that the parent(s) meet the religious requirements is one of the "*practices*" used in decisions about the allocation of places.

32. I agree with the objector that the rabbi could not have reliable, first-hand knowledge of every aspect of the family's compliance with the religious practice requirements. The rabbi would therefore not be able to make a completely objective decision as to whether or not to sign the form confirming that they meet the requirements. I uphold this aspect of the objection.

33. In this respect, the governing body has also made a constructive response. It has proposed that rather than confirming what might be termed the family's "*self-certification*" of meeting the religious practice requirements, a member of the Rabbinate of the UOHC is asked to confirm that the Rabbinate,

"is not aware of any doubt relating to the information and confirmations given above."

34. This proposed change to the school's admission arrangements has not been determined by the governing body by way of a variation, following the procedure set out in paragraph 3.6 of the Code. I am therefore not required to make a definitive finding as to its compliance with the requirements relating to admissions. I would comment, however, that it appears to me that the first part of this process, the self-certification by the applicant, could meet the test of objectivity. Provided that the requirements are expressed clearly and can be assessed objectively, applicants would know if they met them and could sign the form to confirm this fact. Such an approach relies, of course, on the honesty of applicants. There are provisions in the Code relating to the withdrawal of an offer of a place found to have been obtained through a fraudulent or intentionally misleading application (paragraphs 2:12-13).

35. I am less certain that the Rabbinate's confirmation that it is aware of "*no doubt*" about the applicant's self-certification meets the requirement of objectivity required by paragraph 14. I am concerned that a rabbi might come across some information by chance about one family's practice that raises doubts, but does not happen to obtain such information in another similar set of circumstances. Furthermore, I understand the word "*doubt*" to mean a concern or suspicion that has not been objectively confirmed. When I expressed these concerns at the meeting I convened, the school's

representatives sought to re-assure me that the rabbi would have a very close knowledge of families within the local Charedi community. I recognise this to be the case but nonetheless I consider that the rabbi's confirmation should be restricted to what might be termed 'public' practices that can be objectively assessed.

Do the arrangements give priority according to the occupational status of parents applying?

36. The second strand to the objection for which I have jurisdiction is expressed very briefly,

"children of parents who have internet for work purposes are being discriminated against."

The objector cites paragraph 1.9 (f) of the Code, which prohibits admission authorities from giving,

"priority to children according to the occupational...status of parents applying."

37. No further explanation is given, but I surmise that the objector believes that the prohibition of the use of the internet in the religious practice requirements necessarily gives a priority to parents whose occupation does not involve internet use.

38. I do not consider this aspect of the objection to be well-founded. I have found that the prohibition of the use of the internet is a "religious activity" laid out by the school's religious authority. I recognise this prohibition, as originally determined in the school's arrangements, may make it impossible for those wishing their daughter to attend the school to undertake certain occupations that rely on the use of the internet. I do not, however, consider that this causes a breach of paragraph 1.9 (f). Many faiths have requirements, particularly attendance at worship, which may restrict the occupations that its adherents can undertake. What paragraph 1.9 (f) prohibits is the giving of a positive priority to children on the basis of a parent's occupation, for example, to the children of religious leaders. The arrangements do not do this.

39. In fact, the governing body is proposing in its revised set of arrangements to alter this prohibition, as follows:

"Access to the internet is forbidden save for where it is used for purposes associated with the parents' work."

Whilst this appears to meet the objector's concern, for the avoidance of doubt, it is not a change that I require to be made.

Are the arrangements in breach of equalities law?

40. The objector argues that the arrangements are in breach of equalities law in several respects. These can be summarised under three headings, the first two of which appeared in the original objection whilst the third arose in subsequent correspondence:

- (i) the requirement, set out in the “*Charedi principles and ethics*” paragraph of the arrangements, that the child’s father must belong to a Chareidi synagogue “*requires family to be halachically Jewish, so this is indirect discrimination contra to the decision in the JFS case*”;
- (ii) the “*different standards of modesty for men and women*” discriminates against women and is contrary to equalities legislation; and
- (iii) the requirement that the SIF is signed to confirm that both parents meet the “*Charedi criteria*” discriminates against girls where one parent meets these criteria and the other does not.

I will consider each of these headings in turn.

41. The objector refers to the Supreme Court’s judgment in a case relating to JFS, a school with a Jewish religious character in London (R (E) v Governing Body of JFS [2009] UKSC 15). The court held that admission criteria that discriminated against the child whose father was Jewish but “*whose forbears in the matrilineal line were not Orthodox Jews*” discriminated against pupils on the basis of race under the Race Relations Act 1976. I understand the objector’s phrase “*halachically Jewish*” to mean to be born of a Jewish mother and that this is a requirement for membership of a Chareidi synagogue. Therefore, for the school’s religious practice requirements to require that the child’s father must belong to a Chareidi synagogue appears to be at odds with the JFS judgment.

42. The governing body did not contest this point. It acknowledged that it is the religious practice, rather than “belonging” to the synagogue, that is necessary in order to meet the requirements of the “*Charedi principles and ethics*,”

“In practice an observant man can fulfil the requirements set out in the admission arrangements by attending a Charedi synagogue without being a formal member.”

In correspondence, the governing body indicated that it proposed to change the phrase, “*must belong to a Charedi synagogue*” to “*must pray at a Charedi synagogue*”. I note, however, that this change has not been made in the latest set of proposed revisions to the arrangements that I have been provided with. This may be an oversight; the wording must be changed in order to meet the law’s requirements.

43. The next aspect of this part of the objection relates to “*The modesty and holiness requirements*. ” The objector says that the requirements relating to women’s clothing are much more detailed than those for men and that this is contrary to equalities legislation.

44. The Equality Act 2010 prohibits discrimination on a number of grounds including religion or belief and sex. That Act contains an exception for schools designated as having a religious character, which allows them to make a decision about whether or not to admit a child on the basis of religion or belief. Some schools with a religious character give priority for places on the basis of

the parents' "religious activities", as permitted by paragraph 1.9 (i). Provided that those activities, which I consider can include the way the child's parents dress, have been laid out by the school's religious authority, they can be included within the school's oversubscription criteria.

45. The fact that one of the religious activities required to meet "*The Charedi criteria*", that is, the way parents dress, has different requirements for men and women, does not constitute discrimination that the Equality Act prohibits. Within some religions, there are different practice requirements for men and women. There is nothing in the legislation that says that such practices cannot be taken into account, provided the requirements of the Code, relating, for example, to their clarity and objectivity, are adhered to. I do not uphold this aspect of the objection.

46. A third issue relating to equalities law arose during the course of correspondence between me and the objector and the school respectively. On the SIF, above the parent's signature, is the statement,

"I /we confirm that we meet the chareidi criteria as prescribed by the Rabbinate of the UOHC."

The SIF correctly makes clear that only one parent is required to sign the form. Paragraph 2.4 (e) of the Code prohibits admission authorities from asking both parents to sign a SIF. In correspondence, the school emphasised that the parent signing the form does so on behalf of the family, that is, he or she confirms that the requirements relating to both the child's father and mother are met.

47. The objector argued that this requirement discriminates against girls whose fathers met the criteria but whose mothers did not, or vice versa. That only fathers can meet the requirement to attend the synagogue was also said by the objector to be contrary to the Equality Act. In addition, it was felt to be inappropriate that a child's father could sign a form that confirmed details about the child's mother's clothing.

48. In response, the school maintained that the requirement laid out by the UOHC "*legitimately covers the whole family of the applicant.*" The "*Charedi principles and ethics*" paragraph prefaces the requirements for fathers with the phrase, "*Fathers, where applicable...*" The school goes on to say,

"If the sole parent of the applicant is a mother, her daughter's application will obviously not require compliance with the part of the arrangements relating to religious practice by fathers, and that application will not be disadvantaged in any way."

49. I consider that it is legitimate that the religious activities of the applicant's family, as laid out by the religious authority, can be taken into account in giving priority for places at the school. This will mean that if one family member, that is, the child's father or mother, does not meet the "*Charedi criteria*", the SIF cannot be signed. I do not consider that this falls foul of equalities legislation for the same reasons as I have given in paragraph 45. I am not satisfied, however, that this requirement is made sufficiently clear

in the SIF or in any other part of the arrangements. “*Family*” is not defined in the arrangements. There may be uncertainty in the minds of some applicants as to who constitutes their “*family*” and is required to meet the religious practice requirements. In this respect, the arrangements are not clear, as required by paragraph 14 of the Code, and they must be amended.

The reduction in the school’s PAN

50. The reduction in the school’s PAN does not form an explicit part of the objection, but it has been referred to in correspondence. The reduction formed part of the arrangements that were determined following consultation and therefore does not require my specific approval. Nonetheless, using my powers under section 88I of the Act, I have decided to consider whether the Code’s requirements as to fairness (paragraph 14) have been met in this respect.

51. The reduction from September 2019, from 80 to 65 is necessary, according to the school, because of the governing body’s decision to increase its age range by two years from that date. The original physical capacity of the school buildings, when it opened in 2005, was for 450 pupils and this has not changed since. The school has been undersubscribed for several years and currently has around 305 pupils on roll, across the five year groups it currently caters for. This is an average of 61 pupils per year group. It will admit girls into three year groups (years 5, 6 and 7) in September 2019, in order to bring the total to seven. If the number of girls admitted continues to average 61 pupils per year group, the number on roll in September 2019 would be 427. If the PAN of 65 were reached in each year group, the number on roll would reach 455. This figure closely matches the capacity of the school buildings. I consider that the figure of 65 represents an appropriate PAN for admission in September 2019 and subsequent years.

52. Paragraph 14 of the Code requires me also to consider whether the effect of this reduction will be unfair to any group of children. The objector alleged in correspondence that the school’s admission arrangements and way they are administered dissuades parents of some children from seeking a place at the school and that there are,

“currently attempts to reduce the PAN to prevent certain charedi girls from obtaining places at the school.”

No further details have been provided to me, but I do note that the numbers of girls admitted in September 2017 and expected in September 2018 (64 and 61, respectively) are very close to the reduced PAN of 65. It is therefore not inconceivable that the school will be oversubscribed in at least one of the three year groups of pupils that it will be admitting in September 2019.

53. The effect of the reduction in the school’s PAN could be considered unfair if a group of children can be identified who might not now obtain a place at the school, when they might previously have had a reasonable expectation that they would, and that they are unfairly disadvantaged as a result. I understand the objector to be implying that there are other parents who would be willing to apply for a place at the school for their children if this objection

were to be upheld in all or most respects. I have not been given any details about the numbers of such children, where they live and what other schools might be available for them to attend. In the absence of this information, it is not possible for me to establish if they represent a group that might be unfairly disadvantaged by the reduction in the school's PAN. I recognise that, based on current patterns of enrolment, a small number of children might in the future be unsuccessful in obtaining a place at the school. As the arrangements give priority within each of the oversubscription criteria on the basis of distance from the school, these applicants are likely to be those who live furthest away. I do not consider that this is unfair of itself or that the overall effect of the reduction in the school's PAN is in breach of paragraph 14 of the Code.

Other matters

54. The arrangements, as originally determined, indicate that the closing and offer dates for applications for admission in September 2019 are 15 January 2019 and 16 April 2019. These are the national dates for primary schools. I imagine that they are included in the arrangements as the normal year of entry to the school will be year 5. In fact, the extension of the school's age range will classify it as a "Middle deemed Secondary School", in accordance with the Education (Middle School) (England) Regulations 2002. Therefore, the national closing and offer dates for secondary schools should be used, that is, 31 October 2018 and 1 March 2019. In correspondence, the school undertook to amend the arrangements to this effect, but the most recent set of proposed revisions that I have been provided with still includes the primary dates.

55. The arrangements, as originally determined, do not appear on the school's website. Rather, a set of arrangements headed, "*Proposed admission arrangements 2019-20*" can be found. This set of arrangements, which I understand has not yet been determined by the governing body by way of variation, includes some of the revisions that I have mentioned above. It is not identical to the most recent set of proposed arrangements that I have been provided with and that I have referred to in several places above. Until the arrangements for 2019-20 have been determined by way of variation in accordance with the timescale that I give below, the originally determined arrangements should also remain on the website, in order to comply with paragraph 1.47 of the Code.

Summary of Findings

56. The faith-based oversubscription criteria are, in several ways, in breach of the Code's requirement for clarity and objectivity. The Rabbinate's confirmation that these criteria are adhered to by the applicant cannot be objectively given for some elements of the religious practice requirements, which is also a breach of the Code. The requirement that the applicant's father must belong to a Charedi synagogue is contrary to the law. In this respects I uphold the objection.

57. I do not uphold the parts of the objection relating to the prohibition on the use of the internet at work or that the Equality Act is breached.

58. I also find that the arrangements do not make the definition of “*family*” sufficiently clear and that wrong closing and offer dates are included.

Timescale for revision

59. The Code provides, at paragraph 3.1, that arrangements must be amended within “*two months of the date of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.*” I recognise that the school has proposed a number of changes that, in some cases, address the breaches of the Code that I have identified. In my view, some of these changes can be made in time for use in the admissions round for those applying for place at the school in September 2019. Other matters, particularly the way in which applicants’ adherence to the religious practice criteria is confirmed, may require a longer period of reflection, followed by consultation.

60. I therefore require that the arrangements are revised within two months in the following respects:

- the proposed changes to the wording of the religious practice requirements in paragraph 28 above (with the exception of the word “*conservative*” in respect of make up);
- the proposed change that a father does not need to belong to a Charedi synagogue in paragraph 42;
- the change to the closing and offer dates in paragraph 54.

61. The other revisions that are required, relating to the use of the word “*discreet*” to describe make up, the Rabbinate’s confirmation of the applicant’s adherence to the Charedi criteria (paragraphs 32-35) and the definition of “*family*” (paragraph 49) must be made by 28 February 2019, which is the deadline for determining arrangements for 2020.

Determination

62. 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 2019 determined by the governing body for Yesodey Hatorah Senior Girls School, Stamford Hill, in the London Borough of Hackney.

63. 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.

64. 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 two months from the date of

the determination in relation to the matters listed in paragraph 60 and a deadline of 28 February 2019 in relation to the matters listed in paragraph 61.

Dated: 8 August 2018

Signed:

Schools Adjudicator: Peter Goringe