



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3362

Objector: An individual

Admission Authority: The governing board of The Avigdor Hirsch Torah Temimah Primary School, Dollis Hill, London

Date of decision: 3 December 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 board for The Avigdor Hirsch Torah Temimah Primary School, Dollis Hill, in the London Borough of Brent.

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 2019.

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 an individual (the objector), about the admission arrangements (the arrangements) for The Avigdor Hirsch Torah Temimah Primary School (the school), a voluntary aided school with a Jewish religious character for boys aged 3 to 11, 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 Brent Council. The local authority is a party to this objection. Other parties to the

objection are the objector, the governing board 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 board, which is the admission authority for the school. The objector submitted their objection to these determined arrangements on 23 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 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 23 February 2018 and subsequent correspondence;
- b. the school's response to the objection, supporting documents and subsequent correspondence;
- c. the response of Brent Council to the objection and subsequent correspondence;
- d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018 and in September 2019;
- e. copies of the minutes of the meeting of the governing board at which the arrangements were determined; and
- f. a copy of the determined arrangements.

6. I have also taken account of information received during a meeting I convened on 5 July 2018 at the school that was attended by representatives of the governing board, the local authority and the religious authority. In order to remain unknown to the school, the objector chose not to attend.

The Objection

7. The objector believes that the faith-based oversubscription criteria do not comply with the requirements relating to admissions in the following ways (with the paragraphs of the Code referred to by the objector in brackets):

- priority is given according to the occupational or educational status of parents applying (1.9 (f));
- priority is given on the basis of practical and financial support parents may give organisations associated with the religious designation of the school (1.9 (e));
- commitment to the practice of the faith is not set out in a way that is clear; (1.8);
- the requirements of commitment to the practice of the faith are not reasonable, and do not comply with equalities legislation (1.8);
- it cannot be established objectively whether applicants meet the requirements of the faith-based criteria (1.8); and
- the way in which the Supplementary Information Form (SIF) is used in the admissions process is not made sufficiently clear to parents.

Other Matters

8. In reviewing the arrangements, I noted the following matters that I considered might not conform with the Code's requirements:

- the paragraph relating to parents deferring the date their child is admitted is "*subject to the discretion of the Headteacher*" (2.16 (b));
- there is no explanation of the process for requesting admission out of the normal age group (2:17); and
- all applicants are required to complete a SIF and the SIF seeks information that appears to have no direct bearing on decisions about oversubscription criteria (2.4).

Background

9. The school's Published Admission Number (PAN) is 25. It was oversubscribed for admission in September 2019 as parents of 42 boys made the school a preference, including 32 for whom it was their first preference.

10. The oversubscription criteria for admission in September 2019, as originally determined by the governing board on 13 February 2018, can be summarised as follows:

1. Looked after and previously looked after children with a commitment to the faith.
2. Children with a sibling at the school who have a commitment to the faith.

3. Children who have a commitment to the faith, in the following order:

3.1 Applicants whose father or guardian is a full time student in a Kollel approved by the Rabbinat.

3.2 Applicants whose father is a Rabbi in a synagogue recognised by the Rabbinat.

3.3 Applicants whose parents and guardians are significantly active in a professional or voluntary capacity in a charity or communal organisation affiliated to or recognised by the Rabbinat.

3.4 Other looked after and previously looked after children.

3.5 All other applicants.

Within each criterion, a lottery is used to prioritise applicants. My reading of the arrangements is that criteria 3.4 and 3.5 relate to children who do not have a commitment to the faith.

11. The arrangements state that *“The overriding consideration is commitment to the practice of Orthodox Judaism (Faith), as determined from time to time by the Rabbinat of the Union of Orthodox Hebrew Congregations.”* The means of establishing that an applicant demonstrates such a commitment is explained in these terms:

“The commitment will be determined by verifying that the family of the applicant and (if different) the home in which the applicant spends most of his time abides by the Shulchan Aruch and its commentaries, conduct themselves in accordance with the book Oz Vehadar Levusha by Ellyahu Falk and that the applicant does not have access to the internet or television. A reference from the Rabbinat confirming the foregoing may be required.”

12. While I was considering this case, the school provided me with a proposed varied set of arrangements. I have referred to these as the “proposed arrangements”. It is open to admission authorities to vary their determined arrangements in certain circumstances. However, at the time of completing this determination, the school had not actually varied its arrangements and those within my jurisdiction and which are accordingly the subject of this determination are the arrangements as determined on 13 February 2018. I have, however, referred to the proposed arrangements where I have considered it appropriate to do so.

Consideration of Case

13. As can be seen from the summary above, *“Commitment to the faith”*, on the part of the family of the applicant, needs to be verified in order for the applicant to be considered for priority under the oversubscription criteria numbered 1, 2, 3.1, 3.2 and 3.3. I shall refer to these as the “faith-based oversubscription criteria.” Reference is made to two volumes. The Shulchan Aruch is very lengthy, running to over 600 chapters and several thousand pages. It includes detailed instructions on matters such as prayer, the study of the Torah, the preparation of food and the observance of the Sabbath. Rabbi

Falk's book, which has the title in English of "*Modesty – an adornment for life*", is well over 500 pages long. It also contains detailed instructions, mainly about modest dress and personal appearance, principally for women and girls.

14. Before addressing the issues raised by the objector, I must consider whether the governing board is entitled to include compliance with the activities and conduct in these two volumes in its oversubscription criteria. The school summarised its rationale for requiring the families of applicants to abide by the Shulchan Aruch in this way,

"As a faith school, the School requires that the family of its pupils subscribe to and practice [sic] Orthodox Judaism (the Faith). The definition of the Faith is now, and for more than 500 years has been, universally accepted as subscribing to the code of law known as the Shulchan Aruch and its commentaries."

15. 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."

The Avigdor Hirsch Torah Temimah Primary School has a religious designation and its religious authority is the UOHC.

16. The UOHC has not itself provided me with written comments on this objection, although the school, in its initial response, stated that,

"This note has been approved by the Rabbinate of the UOHC which is the consultee under the Code."

The UOHC was represented at the meeting I convened. Its representative emphasised that "*abiding by the Shulchan Aruch*" established whether somebody was conducting himself in line with the requirements of those Jewish schools for which the UOHC is the religious authority. In a further response that I requested after the meeting, the school explained,

"The Rabbinate has provided guidance that the commitment to the practice of Orthodox Judaism is compliance with the Shulchan Aruch. This guidance has been set down in meetings between the Rabbinate and the School."

17. Paragraph 1.38 of the Code states that,

*"Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code."*

18. As stated above, paragraph 1.9 (i) of the Code requires that religious activities that are taken into account by admission authorities of schools designated with a religious character are “*laid out*” by the religious authority of the school. The relationship between these two requirements of the Code and the meaning of the words “*laid out*” in paragraph 1.9 (i) were clarified in the High Court by Cobb J in a judgment about the London Oratory School (Governing Body of the London Oratory v The Schools Adjudicator [2015] EWHC 1012 (Admin)) (which I shall refer to as the Cobb judgment). The Cobb judgment held that,

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

19. I have not been provided with any specific admissions guidance in writing issued by the UOHC in respect of the school. The Cobb judgment did not say that such guidance must be provided in a particular type of document but it does say that it should be “*published*”. I infer from this that the guidance should be in written form and be of sufficient clarity that the admission authority can have regard to it (as required by paragraph 1.38) and can identify specifically which religious activities it can take into account in its arrangements (as required by paragraph 1.9 (i)). I do not consider that such advice to the school as there was from the UOHC in the present case satisfies the requirement of paragraph 1.9(i). There is no document from which the qualifying “religious activities” could be ascertained. There is not even a record or minutes, for example, of advice given by the UOHC at a meeting with the school. I acknowledge that the school governors have told me (in the meeting I convened and in correspondence) that they have been told by the UOHC that a commitment to Orthodox Judaism is demonstrated by compliance with the Shulchan Aruch. The UOHC in that same meeting confirmed that this was their view and that they had conveyed this view to the school in meetings. I do not consider that such a process satisfied the requirement that religious activities must be “*laid out*” in the way explained by Cobb J.

20. Furthermore, and irrespective of the above, I have not been provided with evidence, other than expressions of support at the meeting I convened, that the UOHC has provided advice that conduct in accordance with Rabbi Falk’s book, or the requirement not to have access to the internet or television, can be taken into account by this school. In a submission I invited it to make, the governing board stated in relation to the former,

“norms both in society at large and within the Jewish Community have changed so much in recent years, that the SA requires elucidation. Hence the School has specified compliance with Rabbi Elyahu Falk’s book on the subject.”

21. Paragraph 1.9 (i) does not allow the school (or put more precisely, the governing board of the school as the admission authority) itself to lay out the religious activities that it may take into account in formulating its arrangements. The activities must be laid out by the school’s religious authority, that is, the UOHC.

22. Therefore, for all the reasons above, I conclude that the admission arrangements do not comply with the Code as they prioritise children on the basis of their own or their parents' activities, which have not been laid out as "*religious activities*" by the school's religious authority.

23. Most of the grounds for objection relate to the faith-based oversubscription criteria. If I am right that these criteria take into account activities that have not specifically been laid out by the school's religious authority, any finding I might make that there are other ways in which they breach the Code would not materially add to my conclusion that the arrangements do not comply with the requirements relating to admissions. However, I recognise that the governing board and the UOHC are of one mind over these matters. At the meeting I convened, the representative of the UOHC expressed support for the arrangements specifying compliance with the Shulchan Aruch and Rabbi Falk's book. Indeed, I accept that it is possible that some guidance has, in fact, been issued that meets the requirements of paragraph 1.9 (i), in accordance with the Cobb judgment, albeit that despite my requests it has not been provided to me. In this case, it would be necessary for me to consider whether the faith-based oversubscription criteria meet the other requirements of the Code and admissions law. In addition I recognise that, over the course of considering this matter, a substantial period of time has been spent discussing these criteria and the governing board has proposed several amendments to them. I consider it is appropriate, therefore, to address the grounds of objection put forward by the objector.

Do the arrangements contravene the prohibitions in paragraphs 1.9 (e) and (f)?

24. The objector says that oversubscription criteria 3.1 and 3.2 contravene paragraph 1.9 (f) of the Code, which prohibits admission authorities from giving priority in their admission arrangements,

"to children according to the occupational, marital, financial or educational status of parents applying."

Criterion 3.1 gives priority to children whose father is a full time student in a Kollel. Criterion 3.2 gives priority to children whose father is a Rabbi. These criteria therefore give priority on the basis of the educational and occupational status of the applicant's father respectively. This is prohibited by the Code and I uphold this aspect of the objection. The governing board has undertaken to remove these criteria.

25. The objector also says that criterion 3.3 contravenes the Code, citing paragraph 1.9 (e), which is also a prohibition on giving priority in admission arrangements, in this case,

"to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority."

Criterion 3.3 gives priority to children whose parents are "*significantly active*" in a "*charitable or communal organisation affiliated to or recognised by the Rabbinate.*"

26. In its response to the objection, the governing board undertook to remove this criterion as well. I have not, therefore, investigated whether the organisations referred to would be considered “associated” to the school and thereby would fall foul of the prohibition in paragraph 1.9 (e) of the Code. I would emphasise, however, that the phrase “*significantly active*” is not sufficiently precise to meet the Code’s requirement that oversubscription criteria must be clear (paragraph 1.8). Without further explanation, parents would not know what the extent of their activity must be, both in terms of its nature and the time over which it needs to be carried out, in order to have priority for a place for their child under this criterion. For this reason, I uphold this aspect of the objection.

27. In the proposed arrangements that the governing board has provided to me, criteria 3.1, 3.2 and 3.3 have been removed and replaced with a single criterion of “*other children who have the commitment to the faith.*” It is also made clear that what were criteria 3.4 and 3.5 relate to children who do not have a commitment to the faith. The governing board deserves credit for recognising quickly that certain of its criteria that do not comply with the Code must be removed. Nevertheless, the Code requires that the criterion of “*commitment to the faith*” is clear, can be objectively assessed and that parents can easily understand how it will be reasonably satisfied. It is to this matter that I now turn.

Are the faith-based oversubscription criteria clear?

28. I have set out, in paragraph 11 above, how the arrangements define “commitment to the faith.” The objector submits,

*“Compliance with the the [sic] Shulchan Aruch is very complex and there are differences of opinion on some key matters... The school should set out the parameters of exactly what is required in more detail so that it is **clear.**”*

The objector cites paragraph 1.8 of the Code, which requires oversubscription criteria to be clear. In addition, 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.”*

29. In response, the governing board commented,

“All families applying under the religious oversubscription criteria will understand what compliance with the Shulchan Aruch means. There are a number of clear, published digests which are easily accessible.”

30. At the meeting I convened, it was emphasised by the representatives of the school and its religious authority that, although the requirements of the Shulchan Aruch may appear to be complicated to some, members of that part of the Jewish community for which the UOHC speaks will have been familiar with them from a young age. Those applying for a place for their child at the school would know in detail what was expected of them.

31. As the governing board has acknowledged, a publicly-funded school with a religious character cannot, if there are places available, restrict

admission to members of its faith community. Its arrangements must be clear to all parents who might consider applying for a place there. The governing board maintains that its arrangements meet this requirement. It provided me with the following explanation:

“Parents who wish to apply to the School will see from the clear admission arrangements the requirements to subscribe to the code of law of the Shulchan Aruch (SA) – that is an objective measure. Parents who are unaware of the SA will, de facto, be unable to self-certify that they do indeed meet its requirements. Parents who are aware of the SA will be able to self-certify (or not) that they meet its requirements. On either basis it is a clear and objective measure endorsed by the School’s religious authority.

However, the School considers that a practical guide is important as a definition of the practice of the Faith in relation to modes of dress and deportment, particularly relating to ladies, generally referred to by the Hebrew word tzenius. In this area, norms both in society at large and within the Jewish Community have changed so much in recent years, that the SA requires elucidation. Hence the School has specified compliance with Rabbi Elyahu Falk’s book on the subject.”

32. I accept that the part of the Orthodox Jewish community, for which the UOHC is the religious authority, will be familiar with the Shulchan Aruch and its requirements and that past experience may suggest that it is only such families that will seek to demonstrate that they meet the “*commitment to the faith*” of the school. However, this does not remove the need for the arrangements to be clear to all parents who might read them. What is meant by the requirement that the family of the applicant “*abides by the Shulchan Aruch*” must be able to be clearly understood by those within and outside particular religious communities.

33. For obvious reasons of length, the detail of the requirements of the Shulchan Aruch and Rabbi Falk’s book are not set out in the arrangements themselves. Matters such as the period of time over which a family must have abided by these requirements or the effect of occasional lapses from them are not specifically addressed in the arrangements. Nonetheless, whilst it would be helpful for further detail of this sort to be included, I consider that what is necessary to demonstrate “*commitment to the faith*” can be properly understood. A common-sense reading of the need to “*abide by*” the requirements of the two volumes is that the family of the applicant endeavours to do so and that this commitment is ongoing at the time of applying for a place at the school. Reading the arrangements sensibly and in context, I am satisfied that the arrangements do make clear what is required of applicants who wish to be considered for priority for a place under the faith-based oversubscription criteria. I accept, for example, that a parent who was not an observant Jew would be able to understand that he or she did not abide by the Shulchan Aruch or Rabbi Falk’s book even if he or she knew nothing of their provisions.

34. In response to the objection, the governing board did, in fact, include further detail in its proposed arrangements. It said that the section relating to

“*commitment to the faith*” should be amended to read as follows (I have emphasised the additional wording):

*“The commitment to the Faith will be determined by a **parent of the applicant** verifying **both** that:*

*a) the family of the applicant and (if different) the home in which the applicant spends most of his time abides **by the standards of tzenius (modesty in dress, speech and behaviour) and all aspects of religious observance at home specified by the Shulchan Aruch and its commentaries and the book Oz Vehadar Levusha by Ellyahu Falk; and***

b) the applicant does not have access to the internet or television.”

An additional footnote is provided, which states,

“By way of assistance and example only, applicants may refer to the digest known as Kitzur Shulchan Aruch chapters 12, 27, 30, 46, 72, 98, 153 and 170. This is not an exhaustive list and does not replace the general requirement stated in this paragraph.”

35. The additional wording does provide some clarification and assistance, although I observe that the footnote might give rise to some uncertainty as to the status of the chapters listed from the Kitzur Shulchan Aruch, which are said not to be “*exhaustive*.”

Are the faith-based oversubscription criteria objective?

36. Separately from the requirements concerning clarity above, paragraph 1.8 of the Code requires that oversubscription criteria be “*objective*”. In addition, paragraph 14 states that,

*“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”*

In the context of this case, the objector argues that the way in which “*commitment to the faith*” is determined is not objective (see paragraph 46 below). This necessarily requires, as the Code stipulates, that the oversubscription criteria themselves are objective.

37. The Code does not define “*objective*”. I take it to carry its ordinary meaning in the context of the Code in which it appears. Importantly, it is an unqualified requirement of admission practices and oversubscription criteria. It applies just as much to admissions criteria that seek to incorporate requirements of religious practice as those which do not. If it is to be given meaning, the requirement of objectivity must prohibit criteria that might reasonably be understood differently by different people. The satisfaction of faith-based oversubscription criteria cannot depend on subjective judgment.

38. I am not convinced that these arrangements meet the requirement of objectivity. An example, from Rabbi Falk’s book, which I mentioned at my

meeting at the school, will serve to illustrate my concern. In the relation to make-up, it is stated,

“Cosmetics exist to be used in a moderate and refined manner when the need arises.” (Chapter 7, section K).

There follows some detailed explanation about the use of particular types of cosmetics, which includes adjectives and phrases such as *“extreme moderation”*, *“highly attractive”* and *“eye-catching”*. Although I was given some assurance that families applying for a place for their child at this school would have a common understanding of the requirements in this area, I consider that the use of such language cannot be said to provide an objective standard.

39. I appreciate of course that adherents in many religions may have different understandings of the tenets and practice requirements applying to them. Similarly, different views might be taken of the requirements of a religion by persons who do not adhere to it. The Code explicitly allows oversubscription criteria to give priority on the basis of religious faith and activities, but it also insists that all criteria are objective. It is the responsibility of the admissions authority to ensure that all potential applicants, whether members of a particular faith community or not, share the same understanding of what is required to satisfy its faith-based oversubscription criteria. This may mean that an admission authority needs to grapple with different understandings of what a religion’s practice might require so as to ensure that admissions criteria based on its requirements cannot reasonably be understood in different ways.

40. To an extent, the governing board has embarked on this task, by recognising that changing cultural norms have meant that, in its words, *“the Shulchan Aruch requires elucidation.”* For this reason, the additional requirement to comply with Rabbi Falk’s book has been specified. I do not, however, consider that this is sufficient. As can be seen from the examples quoted above, within this book different understandings of its expectations are plainly possible.

41. I have therefore reached the conclusion that the faith-based oversubscription criteria do not comply with the Code’s requirement for objectivity as set out in paragraphs 1.8 and 14.

Are the faith-based oversubscription criteria ‘reasonable’ and do they comply with equalities legislation?

42. The objector also argues that requiring compliance with the Shulchan Aruch is not *“reasonable”*, as required by paragraph 1.8 of the Code, *“as there are multiple conflicts with the Equalities Act.”* It is also alleged that the dress code for women set out in Rabbi Falk’s book is *“discriminatory against mothers as fathers do not have the same level of control over what they wear.”*

43. The Equality Act 2010 prohibits discrimination on a number of grounds including religion or belief and sex. That Act contains an exception for all schools (both fee-paying and publicly-funded) designated as having a

religious character, which allows them to make decisions about whether or not to admit a child on the basis of religion or belief. The Code, which applies only to publicly-funded schools, allows schools with a religious character to give priority on the basis of faith in admissions. Paragraph 1.36 of the Code provides that publicly funded schools with a religious character cannot keep places empty if enough children apply and places are available, even if some of those children are not of the faith. In giving priority on the basis of faith, publicly funded schools are further bound by various provisions of the Code as set out above, including the ability to give priority to a child by taking into account, amongst other matters, the “religious activities” of the child’s parents, provided such activities have been laid out by their religious authority in accordance with paragraph 1.9 (i) of the Code. If those activities are set out clearly in the admission arrangements, they can be included within the school’s oversubscription criteria.

44. The objector does not quote a religious activity from the Shulchan Aruch. With respect to Rabbi Falk’s book, the way in which adherents to a religion are expected to dress could, in my view, be regarded as a religious activity. Within some religions, there are different practice requirements for men and women. Taking such matters into account in determining whether an applicant for admission to a school satisfies a school’s faith-based oversubscription criteria does not constitute discrimination that the Equality Act prohibits. I do not uphold this part of the objection.

Does the way in which “commitment to the faith” is confirmed meet the Code’s requirements?

45. After the oversubscription criteria have been set out, the arrangements, as originally determined, say,

“applicants may be required to provide verification by the Rabbinate of the applicable criterion.”

A box on the SIF is marked “*Shul Attendance.*” I understood this to mean that applicants should indicate here the name of the synagogue that they attend and that this information would enable the governing board to seek the verification that the applicant meets the requirements of the faith-based oversubscription criteria.

46. The objector contends that,

“the Rabbi signing the form would have no idea if the parent was compliant with all the various laws... Therefore the test is not objective.”

The objector specifically mentions phones with internet access, the use of which would not be known to the Rabbi. In fact, many of the requirements of the Shulchan Aruch relate to matters within the family home. I should mention, for reasons that became clear later, that I was not provided with a copy of any “form” that a Rabbi was requested to sign.

47. The objector makes reference to the determination of the adjudicator in the case of another Jewish school, Hasmonean High School (ADA2990). In

this case, which was specifically about the laws of family purity, the adjudicator concluded,

“it would not be possible to objectively assess whether or not a family observes the laws of family purity.”

Although adjudicator determinations do not set legal precedents and I emphasise that I have considered this case on its own merits, I consider that similar considerations do apply to the present case. I agree with the objector that it would not be possible for a Rabbi to verify whether the family had adhered to the requirements of the faith-based oversubscription criteria. A Rabbi would not be able objectively to make the determination anticipated by the governing board.

48. In response, the governing board provided the following clarification of the process, indicating that it had not, in fact, been seeking confirmation from a Rabbi that applicants met the faith-based oversubscription criteria:

“the current process involves self certification by the family that it meets the specified religious practice requirements. The School acknowledges that this is not sufficiently clear in the admission arrangements’ description of the SIF and the SIF itself and it will make appropriate changes. Furthermore the current arrangements state that in addition “A reference from the Rabbinate confirming the foregoing may be required”. In practice this second certification has not been required in the past, but the School accepts clarification is needed regarding its use.”

49. This explanation concedes that the arrangements are *“not sufficiently clear.”* I agree. It is nowhere made clear, either in the document outlining the oversubscription criteria and the admissions process, or in the SIF itself, that completion of the SIF amounts to a self certification that the applicant’s family meets the religious practice requirements. In addition, it is not explained in what circumstances a reference from the Rabbinate *“may”* be required (or, in fact, that such references are not, in practice, taken up).

50. The Code requires, in paragraph 14, that *“the practices...used to decide the allocation of places”* must be *“fair, clear and objective.”* The confirmation that the family meet the religious requirements is one of the *“practices”* used in decisions about the allocation of places. As this practice is not set out clearly in the arrangements, they are therefore in breach of the Code in this respect.

51. The governing board has indicated that it:

“now proposes to use a SIF which includes self certification by the parent and confirmation by the Rabbi that he is not in possession of any facts which contradict that self-certification.”

52. This proposed change to the school’s admission arrangements has not been determined by the governing board 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.

Is the way in which the SIF is used in the admissions process made sufficiently clear to parents?

53. The final element of the objection is phrased as follows:

“A procedural point is that parents have reported that even with the Rabbi’s form signed they have been told that they still do not qualify for a place, the procedures need to be set out clearly so parents and the school understand that this form, and not the school itself is the test of religious practise [sic].”

54. I do not agree with the objector that the arrangements are unclear in this respect. They state that where there is oversubscription within any criterion, a ‘lottery’ is used to prioritise applicants. The Code refers to a lottery as “*random allocation*.” Provided its requirements, set out in paragraphs 1.34-5, are met, random allocation is not prohibited. As the school has been oversubscribed, it is likely that some applicants who satisfy the religious requirements have been unsuccessful in the lottery and therefore not allocated a place. My jurisdiction in this matter concerns the determined arrangements and whether or not they conform to the requirements relating to such arrangements. It does not extend to the question of the application of those arrangements to children seeking a place at the school. If parents believe that the governing board of a voluntary aided school has not correctly followed the procedures set out in its admission arrangements, their remedy is to complain to the independent appeals panel or to the Local Government Ombudsman. I do not uphold this ground of objection.

Other matters

55. The governing board acted quickly to address the other matters in its arrangements that do not comply with the Code’s requirements, although, as noted above, this has not yet led to varied arrangements. In the proposed arrangements, reference to the discretion of the Headteacher has been removed in respect of whether the admission of a child below statutory school age may be deferred. A paragraph has been added to explain the process for the admission of children outside their normal age group. The requirement to complete the SIF has been limited to those who seek to demonstrate their “*commitment to the faith*” and the SIF itself has been amended to remove most of the requests for information that do not relate to the oversubscription criteria. The proposed revised SIF does ask for details of siblings of the applicant, which, for applicants for places in the reception year, duplicates information collected by the CAF.

Summary of Findings

56. Applicants who wish to be considered under faith-based oversubscription criteria must demonstrate a “*commitment to the faith*” by abiding by the requirements of the Shulchan Aruch, conducting themselves in accordance with the principles of modesty in a book by Rabbi Falk and by not having access to the internet or television. I am not satisfied that these

“religious activities” have been “laid out” by the school’s religious authority in the sense required by paragraph 1.9(i) of the Code so as permissibly to form part of the admissions criteria. It is a breach of the Code for them to be included in the arrangements.

57. The oversubscription criteria, as originally determined, that give priority to applicants whose father is a student in a Kollel or a Rabbi contravene paragraph 1.9 (f) of the Code. The criterion that gives priority for parents who are “*significantly active*” in giving support to an organisation associated with the school’s religious authority is insufficiently clear and therefore in breach of paragraph 1.8. I therefore uphold this aspect of the objection. The governing board has undertaken to remove these criteria from the arrangements.

58. I consider that the way in which a commitment to the faith is to be demonstrated does not meet the Code’s requirement for objectivity. In this respect, I uphold the objection. I do not uphold the parts of the objection that argue that the arrangements are unclear and that they do not comply with equalities legislation.

59. The way in which the governing board confirms that an applicant meets the requirement of a commitment to the faith is not set out clearly in the arrangements, in breach of paragraph 14 of the Code.

60. There are other ways in which the arrangements are in breach of the Code’s requirements. The governing body has proposed revisions to address these matters.

Timescale for revision

61. The governing board’s statements of its readiness to revise promptly the arrangements in a number of respects in which I have found that they do not conform with the requirements relating to admissions is commendable. Some matters can be amended immediately. Others, such as the means of determining “*commitment to the faith*”, will require the consideration of any guidance that may be laid out by the school’s religious authority. Sufficient time also needs to be given to allow the governing board to undertake a period of consultation on its revised arrangements, in line with the process set out in the Code.

62. I therefore determine that the required revisions must be made by 28 February 2019, which is the deadline for determining arrangements for admission in September 2020.

Determination

63. 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 board for The Avigdor Hirsch Torah Temimah Primary School, Dollis Hill, in the London Borough of Brent.

64. 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.

65. 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 2019.

Dated: 3 December 2018

Signed:

Schools Adjudicator: Peter Goringe