



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3380

**Objector:** An individual

**Admission Authority:** The governing board of Pardes House Primary School, 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 Pardes House Primary School, in the London Borough of Barnet.**

**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 Pardes House Primary School, a voluntary aided school with a Jewish religious character for boys aged 4 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 Barnet

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 (the 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 13 March 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 13 March 2018 and subsequent correspondence;
- b. the school's response to the objection, supporting documents and subsequent correspondence;
- c. the response of Barnet 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 2019;
- e. correspondence with the school's religious authority, the UOHC;
- f. emails confirming when the arrangements were determined by the governing board; and
- g. a copy of the determined arrangements.

### **The Objection**

6. The objector believes that the faith-based oversubscription criteria do not comply with the requirements relating to admissions in the following ways:

- priority for places is given on the basis of religious practice requirements that are not objective;

- the requirements of the practice of the faith are not reasonable, and do not comply with equalities legislation;
- it cannot be established objectively whether applicants meet the requirements of the faith-based criteria;
- the requirements for applicants to provide “*a copy of your Kesubah*” (which is a certificate which forms part of the documentation pertaining to a Jewish marriage) and to be members of a synagogue is contrary to a judgment of the Supreme Court; and
- the use of a lottery to determine priority for places is not transparent and in some oversubscription criteria it is not clear whether a lottery or distance from the school will determine priority.

7. The objector also makes reference to priority for places being given to boys who attend the nursery associated with the school. No such priority appears in the arrangements determined for admission in September 2019, provided to me by the governing board. However, I noted that such a priority does appear in the summary of the school’s admission arrangements published in the local authority’s composite prospectus for parents seeking admission to schools in September 2019. My enquiries suggest that there was some uncertainty over the communication of the determined arrangements between the governing board and the local authority. Nevertheless, I am satisfied that the arrangements have been determined and published on the school’s website without this priority. It is therefore not necessary for me to consider this aspect of the objection.

### **Other Matters**

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

- there is no mention in the arrangements of the possibility of deferred entry or part-time provision for children under compulsory school age, as required by paragraph 2.16 of the Code; and
- there is no explanation of the process for requesting admission out of the normal age group (2:17).

### **Background**

9. The school’s Published Admission Number (PAN) is 25, but for several years it has admitted an additional class of up to 25 boys, in order to meet rising demand. Indeed, in the local authority’s composite prospectus, the school is referred to as having an “*admission limit*” of 50. The numbers of parents making the school a preference for admission in September 2018 was 61, of which the local authority reports 52 made it their first preference. The governing board indicated to me that, due to withdrawn applications, it was not oversubscribed (in respect of the admission limit of 50) by first preference applications.

10. The oversubscription criteria for 2019-20 were determined by the governing board on 27 September 2017 and can be summarised as follows:

1. Looked after and previously looked after boys who / whose family observe Orthodox Jewish (Charedi) practice.
2. Boys who / whose family observe Orthodox Jewish (Charedi) practice with a brother at the school.
3. Boys who / whose family observe Orthodox Jewish (Charedi) practice, prioritised by distance from the school.
4. Other looked after and previously looked after boys.
5. Other boys.

The arrangements say that within each criterion a “*random ballot*” is used to prioritise applicants.

11. The arrangements state that,

*“Orthodox Jewish’ (Charedi) is defined as ethos, lifestyle and daily practice that are governed by an unequivocal and lifelong commitment to Torah study and Mitzvos observance, and the central tenets of Yiras Shomayim, Emunas Chachomim, Middos Tovos and Tzenius in dress, speech and behaviour.”*

In later correspondence, the governing board helpfully translated some of the Hebrew words and phrases as follows:

Mitvos – Commandments;  
Yiras Shomayim – Reverence for the Divinity;  
Emunas Chachomim – Respect for the learned;  
Middos Tovos – Good character; and  
Tzenius – Refinement in dress, speech and general conduct.

12. The arrangements give the following instructions to applicants:

*“Applications should be made via the local authority’s coordinated admissions scheme, described in its guidance booklet for parents, with a Supplementary Information Form being submitted simultaneously to the school.”*

The Supplementary Information Form (SIF) includes a section that is headed, “*Information (used to verify the Charedi practice of the family).*” Below the heading, the definition of ‘Orthodox Jewish’ quoted above appears, with the following additional words at the end,

*“...as defined by the Shulchan Aruch and contemporary Poskim”*

13. Applicants are asked to indicate “*Shul membership*”, “*Shul/s attended (if different)*” and “*Which Rabbi do you ask your sha’alos to?*” These instructions follow,

*“We will need to verify your Orthodox Jewish (Charedi) practice and you will need to produce evidence of this. Please include a letter from your Rabbi confirming that you and your family observe Orthodox Jewish (Charedi) practice and provide a copy of your Kesubah. The information will not be used for any other purpose.”*

Under these instructions there is a box for applicants to tick indicating that they *“and my/our immediate family observe Orthodox Jewish (Charedi) practice”*.

### **Consideration of Case**

14. As can be seen from the summary above, *“Orthodox Jewish (Charedi) practice”*, 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 first three oversubscription criteria. I shall refer to these as the “faith-based oversubscription criteria.” It is stated in the SIF, but not elsewhere in the arrangements, that Orthodox Jewish practice is defined *“by the Shulchan Aruch and contemporary Poskim.”* The Shulchan Aruch is very lengthy, running to over 600 chapters. It includes detailed instructions on matters such as prayer, the study of the Torah, the preparation of food and the observance of the Sabbath. Poskim are rabbinic legal scholars.

15. 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 described as *“Orthodox Jewish practice”* in its oversubscription criteria. 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.”*

Pardes House Primary School has a religious designation and its religious authority is the UOHC.

16. I asked the UOHC to provide me with a copy of any general guidance it had sent to schools regarding admissions and any specific guidance on admissions given to Pardes House Primary School. Its registrar replied as follows:

*“I would like to inform you that the Rabbinate of the UOHC has not issued any guidance in general for schools, and not for Pardes House specifically.”*

17. In response to an enquiry, the governing board of the school informed me that,

*“The religious activities that are taken into account in determining priority for places have been compiled in consultation with that body.”* [That is, the UOHC].

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 meaning of the words “*laid out*” in this paragraph were clarified in the High Court by Mr Justice Cobb in a judgment about the London Oratory School (Governing Body of the London Oratory v The Schools Adjudicator [2015] EWHC 1012 (Admin)). Mr Justice Cobb 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. The UOHC has stated in clear terms that it has not issued any general or specific admissions guidance to the school. The governing board indicates that it has “*compiled*” the religious activities it takes into account “*in consultation*” with the UOHC. I do not consider that this meets Mr Justice Cobb’s test quoted above. The judgment did not say that guidance from the school’s religious authority 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 that the guidance should be in written form and be of sufficient clarity that the admission authority can identify specifically which religious activities it can take into account in its arrangements, as required by paragraph 1.9 (i). In the present case, there is no document from which the qualifying “religious activities” could be ascertained. Therefore, I consider 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.

20. 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 been specifically 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 have not been provided with any evidence to suggest that the governing board and the UOHC are not of one mind over this matter. Indeed, it may be possible that some advice has, in fact, been provided that meets the requirements of paragraph 1.9 (i), of which I have not been made aware. In that 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. I consider it is appropriate, therefore, to address the grounds of objection put forward by the objector.

*Are the religious practice requirements objective?*

21. The objector submits that,

*“Charedi practise [sic] is not fully defined by the school, hence it is not an objective measure, as parents wouldn’t know what the precise requirements are because there are many contemporary Poskim (Rabbinic Judges) who all have differing views.”*

The objector does not provide any examples of “*differing views.*”

22. In response to this aspect of the objection, the governing board explained that,

*“The current admissions policy defines Orthodox Jewish in terms of commitment to Torah study and commitment to the observance of Mitzvos (Lit. commandments). The latter are laid down in the Bible and those that are applicable in modern times (such as Charity, dietary requirements, daily prayer) are codified and available in an easily understood format both in book form and online. It should be noted that the key term is ‘commitment’ as Orthodox Judaism is a lifelong learning experience.*

*Reference is also made to reverence for the Divinity, respect for the learned, good character and refinement in dress, speech and general conduct.*

*It is not expected that applicants will have any difficulty in understanding these requirements, many of which are used in other settings.*

*There is no requirement to be familiar with aspects of Judaism that are the domain of experts in Family law or Jurisprudence.”*

23. The word “*objective*” appears in both paragraphs 14 and 1.8 of the Code. Paragraph 14 requires 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

Paragraph 1.8 says that,

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

24. 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. 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.

25. Two elements of the faith-based oversubscription concern me in respect of whether they meet the Code’s requirements for objectivity. First, I am not convinced that a “*commitment*” to Torah study and observance of commandments cannot be understood in different ways. In this context, I understand a commitment to be a settled will or decision to act in a certain way. It does not, in my view, require that a person is actually acting in every respect with that decision at any particular time, perhaps due to a lack of

understanding of what is required or some personal circumstances that make such action very difficult or even impossible.

26. At a later point in their response to the objection, the governing board state that,

*“Religious practise [sic], when defined by a commitment to the practise of Orthodox Judaism may be measured by a Rabbi’s knowledge of the investment made by the individual in furthering his or her knowledge and application of Judaism. This may be gauged by the time devoted to attendance at shiurim (lectures), observation of synagogue attendance and overt religious practise [sic].”*

In making this statement, the governing board appear to recognise that some measurement of the applicant’s family’s commitment to the practice of Orthodox Judaism is necessary in order for that commitment to be assessed according to an objective standard, as the Code requires. I agree. Attendance at lectures and synagogue and certain other observable religious practices could provide such an objective standard, if the frequency of attendance and the specific practices were precisely explained in the arrangements. However, there is no reference at all in the arrangements to any such attendance or particular religious practices. In the absence of such clarification, I consider that it possible both that parents applying for a place at the school and Rabbis, who have the task of gauging a family’s commitment, could come to different understandings of what is required in order to demonstrate a commitment to Orthodox Jewish practice. Therefore, the requirement is not objective.

27. My second concern relates to the religious practices themselves. The governing board state that those that are *“applicable in modern times”* are *“available in an easily understood format both in book form and online.”* However, there is no reference in the arrangements as to the titles of these publications or where they can be found. In the absence of more specific guidance, I am inclined to agree with the objector that there is a possibility of parents coming to different understandings of what is required, particularly over matters, such as *“good character”* and *“refinement in dress, speech and general conduct”*, where there is not necessarily a single standard of behaviour that would be obvious to all. In this respect, too, I conclude that the arrangements are not “objective” and that they are in breach of the Code.

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

28. The objector also argues that requiring *“full compliance”* with the Shulchan Aruch is not *“reasonable”*, as required by paragraph 1.8 of the Code, *“as it is a very long and complex work.”*

29. I do not agree. In fact, as mentioned above, the arrangements require a *“commitment”* to Orthodox Jewish practice as defined by the Shulchan Aruch, rather than *“full compliance.”* I understand the Shulchan Aruch to be the core text detailing Orthodox Jewish religious practice and it is therefore reasonable for a school of that religious character to expect the families of applicants for

places to be committed to adhere to its requirements. Its length and complexity do not, of themselves, render such a requirement unreasonable, particularly as the governing board indicates that modern digests are “*available in an easily understood format.*” Of course, as discussed above, within admission arrangements any religious practice requirements need to be objective, as the Code demands.

30. The objection continues as follows:

*“Further there are Equality Act concerns (as there are vastly different requirements for men and women, as well as discrimination against LGBT people, due to the prohibition against gay sex).”*

31. 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. This can include “religious activities”, 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 and can be assessed objectively, they can be included within the school’s oversubscription criteria.

32. The objector does not specify particular “*different requirements for men and women*” but the governing board acknowledges that they exist, arguing that they constitute “religious activities” and, as such, fall within the exception provided for in the Equality Act. I agree. In some religions, there are different practice requirements for men and women and this does not constitute discrimination that the Equality Act prohibits. Similarly, the requirement to live according to a certain code of sexual conduct can be described as a “religious activity.” I therefore do not uphold this part of the objection.

*Can it be determined objectively whether applicants meet the requirements of the faith-based criteria?*

33. The objector submits that,

*“Certain aspects of charedi practise would be observed privately in the home, and hence there is no fair way for the Rabbi to objectively measure whether the religious practise [sic] test is being met.”*

Reference is made to the determination of the adjudicator in the case of another Jewish school, Hasmonean High School (ADA 2990).

34. Instructions included in the SIF require applicants to provide, “*a letter from your Rabbi confirming that you and your family observe Orthodox Jewish (Charedi) practice.*” The arrangements state that,

*“Jewish (Charedi) practice will be decided by the school’s Va’ad Hachinuch (Rabbinic Authority) and the school plays no part in this process beyond facilitating the provision of information required by the Va’ad Hachinuch. Any matters of disagreement will be decided by the presiding Rabbi of the Union of Orthodox Hebrew Congregations in England.”*

35. In the Hasmonean 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, in my view, similar considerations apply to the present case. Some of the requirements set out in the Shulchan Aruch, for example, those relating to the preparation of food, are met privately within the family home. The Code 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 family meet the religious requirements is one of the *“practices”* used in decisions about the allocation of places.

36. I agree with the objector that it would not be possible for a Rabbi to verify whether the family had adhered to some of the requirements of *“Orthodox Jewish practice.”* A Rabbi would not be able objectively to make the determination anticipated by the governing board. Similarly, although the process whereby the presiding Rabbi of the UOHC would resolve any disagreement is not set out in the arrangements, I consider that he would be in a similar position to the family’s Rabbi.

37. In its response to the objection, the governing board also recognised that this is the case. It says,

*“It is not expected that Rabbis will be in a position to form an opinion regarding matters that are not observable. This is a matter of common sense.”*

The governing board emphasises that it is a *“commitment”* to the practice of Orthodox Judaism that is required. However, as I explained in paragraph 26 above, I consider that the arrangements do not set out a way of measuring such a commitment that is objective. I therefore uphold this aspect of the objection.

*The requirement to provide a copy of Kesubah and to indicate synagogue membership*

38. The objector draws attention to the requirements in the SIF that the applicant should both provide a copy of their *“Kesubah”* (in other places, different spellings are used by parties to the case) and indicate the synagogue of which they are members. The objector says,

*“Asking for ketuba is to enable the religious authority to proof [sic] their Jewish status”*

and

*“Synagogue Membership costs money, and is restricted to halakhic Jews... and so this cannot be used to determine state school admissions.”*

Both of these requirements are, according to the objector, contrary to the decision of the Supreme Court in a judgment relating to JFS, a school with a Jewish religious character (R (E) v Governing Body of JFS [2009] UKSC 15).

39. In response, the governing board told me,

*“The issue of a Ketuba is a religious practice associated with Orthodox Jewish weddings. It is not requested to establish Jewish identity”*

and

*“Synagogue membership is not a criterion for admission. It is requested so that, if indicated, the identity of the synagogue may assist in establishing whether the applicant follows Orthodox Jewish practise [sic]. (It is also helpful in informing class groupings in the Reception year).”*

40. The Code makes clear, in paragraph 2.4, that admission authorities **must** only use SIFs to request additional information, *“when it has a direct bearing on decisions about oversubscription criteria.”* In the light of this requirement, I will consider these two matters in turn.

41. There is no direct reference to marriage or the provision of a copy of a Kesubah in the oversubscription criteria, nor is it made clear in the SIF why this document is required. If the provision of a Kesubah is intended to be a way for applicants to indicate their conformity with *“Orthodox Jewish practice”*, this should be set out in the oversubscription criteria. It is not. Therefore, I consider that the request for Kesubah does not comply with paragraph 2.4 of the Code as it does not have a direct bearing on determining priority for places in accordance with the oversubscription criteria. Furthermore, paragraph 2.4 goes on to say that admission authorities,

*“**must not ask, or use supplementary forms that ask, for...***

*(a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates).*

The request for a copy of a Kesubah thus breaches this prohibition.

42. With respect to the request for details of the applicant’s membership of a synagogue, the governing board make clear that such membership is not an oversubscription criterion in itself, but *“may assist in establishing”* if the applicant follows Orthodox Jewish practice.

43. The governing board has not explained to me how membership of a particular synagogue relates to giving priority for places to applicants whose families follow Orthodox Jewish practice. If it is the case that membership of certain synagogues would confirm or add weight to an application, this should be clearly stated. I can find no such statements in the arrangements. Therefore, I conclude that asking for this information does not have *“a direct bearing”* on decisions about oversubscription criteria and is in breach of paragraph 2.4 of the Code.

44. As both of these requirements fail to comply with the requirements of the Code, it is not necessary for me to consider the objector's contention that they are also contrary to the Supreme Court's judgment in the JFS case. I would also add that, irrespective of how information about the synagogue an applicant attends might inform class groupings, such a matter can have no place in a SIF.

*The use of a lottery to determine priority for places*

45. The final part of the objection that I have to consider is worded as follows,

*"The Oversubscription criteria in each category is [sic] not set out meaning that the school can select who they want without any transparency. Many similar schools use "lotteries" to remove the possibility of accountability and transparency as if a child doesn't get a place, the parents do [not] know whether they were added to the "hat" or discarded for some other reason or whether they genuinely were not picked. It thus makes it almost impossible to appeal. Either way the criteria do not state whether it's a lottery or on distance and hence they are **not transparent**."*

46. I have already concluded that the faith-based oversubscription criteria do not meet the Code's requirement for objectivity, so at this point I shall restrict my consideration to the objector's remarks about what the arrangements call "*random ballot*." The Code includes the following requirements for this process,

*"Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent"* (paragraph 1.34).

*"The random allocation process **must** be supervised by someone independent of the school"* (paragraph 1.35).

47. The school's admission arrangements state that,

*"In the event of there being insufficient places for all applicants within any of the above criteria, a random ballot will be used to determine which children will be admitted under the criterion in question, in the presence of an independent observer."*

This statement appears to me to satisfy the Code's requirements, as it makes clear that random allocation will be used to determine priority for places in the event of oversubscription within a criterion and that an independent observer will be present.

48. With respect to the objector's suggestion that the process lacks transparency as parents would not know if their child had been deemed to have met the requirements of a particular oversubscription criterion and therefore had been included within the random allocation process, the Code

explains the governing board's responsibilities in paragraph 2.24, which is headed "*Right to appeal.*"

*"When an admission authority informs a parent of a decision to refuse their child a place at a school for which they have applied, it **must** include the reason why admission was refused."*

49. I should make clear that 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. I cannot, therefore, investigate whether the governing board do in fact meet the requirement of paragraph 2.24 of the Code. If parents believe that the governing board of a voluntary aided school has not correctly followed the procedures set out in its admission arrangements or the Code, their remedy is to complain to the independent appeals panel or to the Local Government Ombudsman.

50. The objector's final sentence suggests that it is unclear in the arrangements when priority for places is given on the basis of random allocation and when it depends on the distance of the applicant's home from the school. I disagree with this suggestion in respect of criteria 1, 2, 4 and 5, as it is quite clear that random allocation is used to determine priority for places. However, criterion 3 does state that applicants will be prioritised by distance. This undoubtedly contradicts the statement I quoted in paragraph 47 above, which says that random allocation will be used "*within any of the above criteria.*" To this extent, I agree with the objector that the arrangements are unclear and do not comply with paragraph 1.8 of the Code.

### **Other matters**

51. The governing board acknowledged that the requirements of the Code that I mention in paragraph 8 above are missing from the arrangements. An undertaking has been made to amend them accordingly.

### **Summary of Findings**

52. Applicants who wish to be considered under faith-based oversubscription criteria must demonstrate that they observe "*Orthodox Jewish practice*" in matters such as "*lifestyle and daily practice.*" I have not been provided with evidence that these "*religious activities*" have been specifically "*laid out*" in guidance on admissions by the school's religious authority. Indeed, the school's religious authority states that it has not provided such guidance. Therefore, the religious activities are not covered by the exception in paragraph 1.9 (i) of the Code to the prohibition on taking into account a parent's activities. It is a breach of the Code for them to be included in the arrangements.

53. The faith-based oversubscription criteria require a "*commitment*" to Orthodox Judaism. It is possible to hold different understandings as to what such a commitment entails. The religious practice requirements themselves are also, in some respects, able to be understood in different ways. The

oversubscription criteria are therefore not objective as required by paragraph 1.8 of the Code. Furthermore, I consider that the way in which a commitment to the faith is to be demonstrated also does not meet the Code's requirements for objectivity.

54. I do not uphold the part of the objection that argues that the arrangements are unreasonable and do not comply with equalities legislation.

55. The request on the SIF for applicants to give details of synagogue membership and provide a copy of their Kesubah is in breach of paragraph 2.4 of the Code, as this information does not have a direct bearing on decisions about oversubscription criteria.

56. The use of random allocation is set out in accordance with the Code's requirements, but it is not clear whether random allocation or distance from the school is used to determine priority for places within one of the oversubscription criteria.

### **Timescale for revision**

57. 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 some of the revisions that are required will need to be discussed with the school's religious authority, followed by a period of consultation. I therefore require that the revisions must be made by 28 February 2019, which is the deadline for determining arrangements for 2020.

### **Determination**

58. 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 Pardes House Primary School, in the London Borough of Barnet.

59. 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.

60. 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