



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3530**

**Objector: An Individual**

**Admission authority: The Governing Board of Pardes House Primary School, Barnet, London**

**Date of decision: 16 August 2019**

## 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 2020 determined by the governing board of Pardes House Primary School 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.**

## 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 a person, the objector, about the admission arrangements (the arrangements) for Pardes House Primary School (the school), a voluntary aided primary school with a Jewish religious character for boys aged 4 – 11 for September 2020. The objection relates to alleged mis-use of the self-verification process which is used to establish whether the religious criteria required to secure priority for admission are met, and to the nature of the requirements which must be met in order for an applicant to demonstrate religious practice. It is also alleged that the school affords priority

to applicants attending its nursery, which is not stated in the arrangements, and that the random allocation ballot is 'rigged'.

2. The local authority (LA) for the area in which the school is located is the London Borough of Barnet. The LA is a party to this objection. Other parties to the objection are the governing board of the school and the Office of the Rabbinate of the Union of Orthodox Hebrew Congregations (the UOHC).

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing board on 28 February 2019, which is the admission authority for the school. The objector submitted his/her objection to these determined arrangements on 5 April 2019. The objector has asked to have his/her 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 his/her name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act. Some aspects of the objection are within my jurisdiction, however the allegations about the ballot being rigged and priority being afforded to applicants who attend the nursery are not within my jurisdiction for reasons which will be explained below. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements, which include a Supplementary Information Form (SIF);
- c. the objector's form of objection dated 5 April 2019 and further correspondence;
- d. the school's response to the objection;
- e. the UOHC's response to the objection;
- f. a copy of the guidance on admissions provided to the school by the UOHC;
- g. the LA's online composite prospectus for admissions to primary and secondary schools for September 2019;
- h. all supporting documents submitted by the parties; and
- i. a previous determination made in respect of the school on 3 December 2018. Case reference ADA3380.

The LA was invited to comment on the objection and has been provided with copies of all relevant papers but has not chosen to respond.

## The Objection

6. There are four grounds of objection. These are as follows:

**i. Self-certification is a myth**

The arrangements require that applicants must establish a commitment to the standards of Orthodox Jewish (Charedi) religious observance and tzenius (modesty in dress, speech and behaviour) as specified by the code of Jewish law, and published under the title "*Shulchan Aruch*". According to what is stated in the arrangements, such commitment is established by the applicant's parent signing and returning a SIF, in other words a form of self-certification. The objector claims that the school does not conduct a process of self-certification. In practice, commitment to the faith is determined by evidence supplied by the relevant Rabbi, and it is unclear what the Rabbi is asked or which information provided by the Rabbi is used to determine whether an applicant meets the requirements relating to religious observance and tzenius.

It has been explained to the objector and the other parties that my jurisdiction in considering this ground is restricted to determining whether the SIF is clear. Paragraph 14 of the Admissions Code states that, *in drawing up their admission arrangements, admission authorities must ensure that the practices 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.* The SIF is part of the school's admission arrangements.

I am not able to express a view upon whether the school should have a self-certification system or whether it should approach the Rabbis. This is a matter for the school. Both approaches could be lawful and reasonable as long as the process is described clearly.

Also, my jurisdiction is confined to the consideration of whether a set of admission arrangements comply with the Code, I am not able to consider the issue of whether the school is operating a process which is different to that which is set out in the arrangements. If a family have self-certified but their application has been refused due to information provided by a Rabbi, this could be taken forward as a complaint by the objector or the child's parents initially through the school's complaints process and thereafter to the Local Government Ombudsman if the school does not resolve the complaint satisfactorily. It would also be a legitimate ground upon which the parents could appeal the decision to refuse an application to an Independent Appeal Panel. I am not able to take this ground of the objection any further.

**ii. The criteria used to establish commitment to the standards of Charedi religious observance and tzenius are subjective and therefore also unclear**

The objector claims that the criteria used to establish commitment to the standards of Charedi religious observance and tzenius are subjective and therefore also unclear. The objector refers to specific examples, which I have considered below.

Paragraph 14 of the Code (cited above) is relevant to this ground of objection. Also relevant is paragraph 1.8 says that “*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.*”

**iii. The school affords priority to applicants attending its nursery**

The objector claims that the school affords priority to applicants attending its nursery, whereas the arrangements do not enable this. It is open to the school, as the admission authority, to afford priority to such applicants, however the applicant is correct in stating that the arrangements do not provide for this and therefore it should not be happening. It has been explained to the objector and the other parties that I do not have jurisdiction in relation to this ground of objection. My jurisdiction is confined to the consideration of whether a set of admission arrangements comply with the Code. I am not able to consider the issue of whether the school is operating a process which is different to that which is set out in the arrangements. It has been suggested to the objector that, if he/she has a specific example of a child in nursery being given priority because the child has attended the nursery, and this is supported by relevant evidence, he/she could take this forward initially through the school’s complaints process and thereafter to the Local Government Ombudsman if the school does not resolve the complaint satisfactorily.

The parents of any such child would also have access to these redress mechanisms, and would be able to appeal the decision to refuse the application to an Independent Appeal Panel. I am not able to take this ground of the objection any further.

**iv. The random allocation ballot is being rigged**

The objector claims that the random allocation ballot is being rigged by the school. It has been explained to the objector and the other parties that any alleged rigging of the ballot is not something within my jurisdiction. Again, if the objector has a specific example of this, supported by relevant evidence, this could be taken this forward by the objector or by the child’s parents initially through the school’s complaints process and thereafter to the Local Government Ombudsman if the school does not resolve the complaint satisfactorily. The parents would also be able to appeal the decision to refuse an application to an Independent Appeal Panel.

I do, however, have jurisdiction to determine whether the admission arrangements comply with paragraphs 1.34 and 1.35 of the Code. Paragraph 1.34 contains the following requirements: “*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, and that looked after and previously looked after children are prioritised*". Paragraph 1.35 requires that *"the random allocation process must be supervised by someone independent of the school, and a fresh round of random allocation must be used each time a child is to be offered a place from the waiting list"*.

The arrangements state: *"In the case of 2 or more applications that cannot be separated by the oversubscription criteria outlined above, the school will use random allocation as a tie breaker to decide between applicants. This process will be independently verified"*. This appears to fall somewhat short of the requirements in paragraphs 1.34 and 1.35, and so I have considered this aspect of the random allocation process using my jurisdiction under section 88I.

## Other Matters

7. Since these arrangements have been drawn to my attention, I have observed a number of other matters which appeared not to conform to the Code. I drew these to the school's attention in a letter dated 24 May 2019. These all related to a lack of clarity in the arrangements, and therefore a failure to conform to paragraph 14 of the Code. Some are minor.

- The arrangements do not set out the closing date for submission of the application form and SIF.
- The arrangements make no provision for late applications.
- '*Agreed admission number*' should be Published Admission Number or (PAN).
- The order of priority for non-sibling Charedi boys is unclear from the arrangements. Provision for this category of applicant is currently unspecified, and they would accordingly appear to fall under '*Other boys*'.
- It is not clear from the arrangements when distance will be used as a tie breaker, and when random allocation will be used. If it is the case that random allocation is used when two or more applicants live exactly the same distance from the school, the arrangements should say this. Distance is not listed as an oversubscription criterion.
- It is not clear from the arrangements how long the waiting list will be maintained for (paragraph 2.14 of the Code requires that a clear, fair and objective waiting list must be maintained until 31 December of each school year in question).

## Background

8. The school has a PAN of 25 for entry in reception. However, the arrangements state that the school may take up to 21 additional children in order to cope with the expected demand for places. The school was established to serve the Orthodox Jewish (Charedi) Community of North West London, and to provide education for the sons of parents who all

observe Orthodox Jewish (Charedi) practice. The arrangements say that *“The designation of Orthodox Jewish (Charedi) comprises an ethos, lifestyle and practice that demonstrates a commitment to Torah study and Mitzvos observance, and the fundamental tenets of Yiras Shomayim, Emunas Chachomim, Middos Tovos and Tzenius in dress, speech and behaviour.*

*Such commitment is principally characterized by*

- Daily attendance at communal prayer, when possible in a recognised Shul (synagogue)(applies to adult males).*
- Daily Torah study (applies to adult males).*
- Observance of Kashrus (Dietary Laws) within and without the home.*
- Observance of Shabbos.*
- Adherence to the Laws pertaining to Family purity for married couples.*
- The avoidance of coarse speech.*
- The avoidance of dress which emphasises or unduly exposes the body.*
- Respect for the Torah, teachers of the Torah and fellow men and women.*

*In all these matters, the Shulchan Aruch is the principal reference work. The following secondary sources provide equivalent guidance*

- Horeb by Rabbi Samson Raphael Hirsch (Soncino Press) translated by Dayan Dr I Grunfels*
- A Guide to the practical observance of Shabbos by Rav Yehushua Neuwirth (Feldheim)*
- Daughter of Israel Laws of Family Purity by Kalman Kahana (Feldheim)*
- Jewish Dietary Laws by Dayan Dr I Grunfeld (Soncino press)*
- The ‘Guidelines’ series by Rabbi Barclay and Jaeger (Menucha press)*
- Modesty – An Adornment for Life by Rabbi E Falk (Feldheim) Chapters 5 & 6*

*A suitable filter, preferably a Technology Awareness Group (TAG) approved filter, must be deployed on all internet enabled devices. The filter must be capable of blocking https websites.*

*The parents of children who are accepted on the basis of the faith-based criteria will be required to self-certify, using the Supplementary Information Form, that they satisfy these requirements”.*

9. The oversubscription criteria are as follows:

1. ***In care*** - Boys who are ‘looked after’ or were ‘previously looked’ after and who/whose family observe Orthodox Jewish (Charedi) practice.

2. **Siblings** - Boys who/whose family observe Orthodox Jewish (Charedi) practice, with siblings in the school at the time of admission. Siblings include step siblings, foster siblings, adopted siblings and other children living permanently at the same address. Priority will not be given to children with siblings who are former pupils of the school.

3. **In care** - Other boys who are 'looked after' or 'previously looked after'

4. Other boys.

10. Also relevant to the objection are the section entitled '*Tie Break*', and the SIF. The section entitled '*Tie Break*' states:

*"In the case of 2 or more applications that cannot be separated within the oversubscription criteria outlined above, the school will use the distance between the school and a child's home as a tie breaker to decide between applicants. Priority will be given to children who live closest to the school. Distance will be measured in a straight line from the child's home address to the school's front gates on Hendon Lane using the Local Authority geographical information system. A child's home address will be considered to be where he is resident for the majority of nights in a normal school week.*

*In the case of 2 or more applications that cannot be separated by the oversubscription criteria outlined above, the school will use random allocation as a tie breaker to decide between applicants. This process will be independently verified".*

11. The SIF reiterates that the designation of Orthodox Jewish (Charedi) comprises an ethos, lifestyle and practice which demonstrates a commitment to Torah study and Mitzvos observance, and the fundamental tenets of Yiras Shomayim, Emunas Chachomim, Middos Tovos and Tzenius in dress, speech and behaviour. There is a section in the form entitled '*Information used to verify Charedi practice of the family*' which asks for the details of the Shul/s attended for communal prayer; the Rabbi's name and contact number; and the name and contact number of the Rabbi sha'alos are asked to. The form states:

*"In order to verify your Orthodox Jewish (Charedi) practice you will need to self-certify the following*

*I/We and my/our immediate family observe Orthodox Jewish (Charedi) practice as described in the Introduction to the Pardes House Primary School admissions policy The child for whom this application is made does not have access to internet enabled devices or to television".*

12. The school's arrangements for admission in September 2019 were objected to in ADA3380. This objection raised some points which are similar to those raised in the objection before me. Regulation 22 of the School Admissions Regulations 2012 and paragraph 3.3(e) of the Code prevent an objection from being made which raises the same

or substantially the same matters as the adjudicator has decided on for that school in the last two years. Therefore, on the basis of these provisions, I am precluded from considering the allegation that priority is given to applicants whose children attend the nursery because this was raised as a ground of objection in ADA3380, however as I have already said this is outside my jurisdiction for other reasons.

13. In ADA3380, it was argued that the use of a lottery to determine priority for places was not transparent and that in some of the oversubscription criteria it was unclear whether a lottery or distance from the school would determine priority. The objector in this case alleges that the lottery is rigged, which is not the same point, however I have said already that any allegation of lottery rigging is outside my jurisdiction for other reasons.

14. In ADA3380, it was argued that the requirements of the practice of the faith were not reasonable, and did not comply with equalities legislation, and that it could not be established objectively whether applicants meet the requirements of the faith-based criteria. This objection questions whether the requirements for meeting the faith-based oversubscription criteria are subjective and therefore unclear, which is a subtly distinct point. Because the faith-based requirements in the arrangements for admission in September 2020 are different to those set out in the arrangements for admission in September 2019, I do have jurisdiction to consider this ground of objection.

## Consideration of Case

### The Objection

#### Ground One

15. As explained above, I have jurisdiction in relation to two of the grounds of objection. These are whether the SIF is sufficiently clear and whether the faith-based criteria are subjective and therefore unclear.

16. Turning firstly to the SIF. The arrangements state that the parents of children who are accepted on the basis of the faith-based oversubscription criteria will be required to self-certify using the SIF that they satisfy the relevant requirements. The SIF requires provision of the name of the Shul attended and the Rabbi. It does not indicate explicitly that the Rabbi will be contacted by the school; if so, what the Rabbi is asked; and what role the Rabbi plays in determining whether a place should be offered.

17. The school has explained that the family Rabbi will not be contacted by the school routinely. However, the School may contact the Rabbi *“to confirm that the applicant attends the Synagogue for communal prayer and/or that questions relating to religious observance are addressed to him by the applicant”*. The school says that the Rabbi is not requested for comment regarding the applicant’s observance of Orthodox Jewish (Charedi) practice nor whether the child for whom the application is made has access to internet enabled devices or television. The school says that the evidence for this is provided by the applicant’s self-certification.

18. The objector says that he/she has been informed by members of the local Jewish community that their applications have been rejected from the school, whereas boys who live further away are given places. On this basis, the objector considers that there is something going on which does not fit with what the school says. It should never be the case under the arrangements that an applicant would complete the SIF in good faith, certifying that they are observant and attending the synagogue regularly in accordance with the published guidelines, but the school would then refuse the application based upon information, or views, provided by the Rabbi. This is not self-certification.

19. I am not able to comment upon an unsubstantiated allegation that the school is not actually operating self-certification, but I do agree with the objector that the arrangements do not make clear the circumstances in which a Rabbi will be contacted; what he will be asked; or what effect his answers will have. The school has explained the purpose of contacting the Rabbis, however if Rabbis are not contacted routinely, I cannot see any reason why their names and contact details need be provided routinely by every applicant. If the school conducts checks as to whether an applicant does, in fact, attend communal prayer on a daily basis and addresses questions relating to religious observance to a Rabbi, the school could ask for the name of the Rabbi and the Shul attended at the point when it decides to undertake the check for a particular applicant. There would appear to be no need for the school to be provided with such personal data in respect of every application, and indeed this raises questions about compliance with the requirement in the Data Protection Act 2019 that personal data should only be processed on a strictly need-to-know basis. All that would be needed to explain the process clearly would be for the arrangements to inform parents that random checks are carried out for the purpose of verifying Shul attendance; that they may be asked to provide the name of the Shul attended and the name and contact details of the Rabbi in order to verify such attendance; and that the Rabbi may then be contacted to confirm daily Shul attendance and to confirm that the applicant addresses questions relating to religious observance to him, but not for any other purpose. The arrangements will need to set out explicitly the circumstances of when a Rabbi will be contacted and what he will be asked if for no other reason than to avoid the impression that the self-certification process is a sham. As I have said above, the school can choose either to have a process of self-certification or a process of verification by a Rabbi. Both are lawful. But, where a set of arrangements purports to have a self-certification process, I can see no reason for the provision of information about the Shul attended and the name and contact details of the Rabbi other than in cases where checks are being made. Further, the purpose of requiring an applicant to provide the name and contact details of their Rabbi must be clearly stated as this would appear at face value to be at odds with self-certification. **Because the arrangements do not explain the circumstances in which the Rabbis will be contacted or the purpose of such contact, I uphold this ground of the objection on the basis that the SIF (which is part of the arrangements) is unclear.**

Ground Two

20. Turning now to the question of whether the faith-based oversubscription criteria are subjective and therefore unclear, the school confirms that it has not defined the characteristics of Torah study.

21. The UOHC responded to the objection on 30 April 2019 setting out the guidance which it says was issued to the school on 28 February 2019. I have extracted the relevant paragraphs:

*“3.1 In order to preserve the religious character of the School we request that you ask each applicant to self-certify the following:*

*3.1.1 The family of the applicant and (if different) the home in which the applicant spends most of his time is committed to the standards of Orthodox Jewish (Charedi) religious observance and tzenius (modesty in dress, speech and behaviour) as specified by the code of Jewish law, published under the title, Shulchan Aruch.*

*Such commitment is principally characterized by*

*• Daily attendance at communal prayer, when possible in a recognised synagogue (adult males). • Daily Torah study (adult males). • Observance of Kashrus (Dietary Laws) within and without the home • Observance of Shabbos • Adherence to the Laws pertaining to Family purity. • The avoidance of coarse speech • The avoidance of dress which emphasises or unduly exposes the body • Respect for the Torah, teachers of the Torah and fellow men and women*

*In all these matters, the Shulchan Aruch is the principle reference work. However, the following secondary sources provide equivalent guidance*

*• Horeb by Rabbi Samson Raphael Hirsch (Soncino Press) translated by Dayan Dr I Grunfeld • A Guide to the practical observance of Shabbos by Rav Yehushua Neuwirth (Feldheim) • Daughter of Israel Laws of Family Purity by Kalman Kahana (Feldheim) • Jewish Dietary Laws by Dayan Dr I Grunfeld (Soncino press) • The ‘Guidelines’ series by Rabbi Barclay and Jaeger (Menucha press) • Modesty – An Adornment for Life by Rabbi E Falk (Feldheim) Chapters 5 & 6*

*3.1.2 A suitable filter, preferably a Technology Awareness Group (TAG) approved filter, is deployed on all internet enabled devices. The filter is capable of blocking https websites.*

*3.1.3 The applicant (meaning the child for whom the application is being made) does not have access to internet enabled devices or television”.*

22. The school has replicated the UOHC guidance in its arrangements. Examples cited by the objector of faith-based oversubscription criteria which are subjective and therefore unclear are the following:

- *daily attendance at communal prayer, when possible in a recognised Shul (synagogue);*
- *daily Torah study;*
- *observance of Kashrus (Dietary Laws) within and without the home;*
- *observance of Shabbos;*
- *adherence to the Laws pertaining to Family purity for married couples;*
- *the avoidance of coarse speech;*
- *the avoidance of dress which emphasises or unduly exposes the body; and*
- *respect for the Torah, teachers of the Torah and fellow men and women.*

23. The school has clarified that the requirements of daily attendance in a recognised Shul and daily Torah study apply to the applicant child’s father, and this does need to be made clear in the arrangements themselves as they refer to (unspecified) adult males.

24. In ADA3380 the adjudicator considered whether the school was 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.*”

25. Pardes House Primary School has a Jewish religious designation and its religious authority is the UOHC. The UOHC has issued bespoke guidance to the school. The school has followed this guidance, and indeed has replicated it in the current arrangements. 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.*” The school revised its arrangements following the determination in ADA3380, and has followed the guidance laid out by the UOHC in determining its faith-based admission criteria. The question then is whether its faith-based oversubscription criteria are now objective and clear.

26. 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.”

27. The Code does not define “*objective*”. Therefore, I take it to carry its ordinary meaning in the context of the Code in which it appears. The adjudicator in ADA3380 stated that objectivity in the context of the Code 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”*. It follows from this that the arrangements must be clear to any person who is considering making an application to the school.

28. The concepts of commitment to the standards of Orthodox Jewish (Charedi) religious observance and tzenius (modesty in dress, speech and behaviour) are difficult to define in a way which makes them objectively clear. A person who considers themselves to be committed to these concepts could genuinely self-certify as such, but that person’s level of commitment may be different to that of another person. There is a matter of degree. The school has sought to define its faith-based oversubscription clearly by measuring this degree in terms of daily attendance at communal prayer and daily Tora study. My view is that this is a reasonable objective description of what is required, and that the requirements are clear.

29. The other faith-based oversubscription criteria refer to observance of Kashrus (Dietary Laws) within and without the home; observance of Shabbos; adherence to the Laws pertaining to Family purity for married couples; the avoidance of coarse speech; the avoidance of dress which emphasises or unduly exposes the body. The adjudicator in ADA3380 was concerned that, in the school’s previous arrangements, there were no explanations or definitions of terms 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. The school has removed the references to “*good character*” and “*general conduct*”, and has sought to make the arrangements clearer by incorporating a list of publications which set out the various “laws” and requirements in relation to each aspect in the list of oversubscription criteria.

30. These publications are referenced specifically. *A Guide to the practical observance of Shabbos by Rav Yehushua Neuwirth (Feldheim)* purports to explain what is required by observance of Shabbos; *Daughter of Israel Laws of Family Purity by Kalman Kahana (Feldheim)* will explain what is meant by adherence to the laws of family purity; *Jewish Dietary Laws by Dayan Dr I Grunfeld (Soncino press)* will explain the relevant dietary laws; and *The ‘Guidelines’ series by Rabbi Barclay and Jaeger (Menucha press)*, and *Modesty – An Adornment for Life by Rabbi E Falk (Feldheim) Chapters 5 & 6* will explain modesty in dress. Certain aspects of Charedi practice are observed privately in the home. The adjudicator in ADA3380 was concerned a Rabbi could not know whether a family was observing those

aspects of Charedi practice. The school has removed the provision in the arrangements that commitment to Charedi religious observance and tzenius (modesty in dress, speech and behaviour) should be determined by a Rabbi. Applicants may now self-certify. My view is that a process of self-certification is eminently reasonable in these circumstances, and that the arrangements are as clear as they can be about what is required without incorporating an exhaustive list permissible foods, dress, speech and conduct requirements.

31. The final aspect of commitment to Charedi practice refers to respect for the Torah, teachers of the Torah and fellow men and women. This does not appear to be defined, however the normal everyday meaning of the word “*respect*” is objectively clear. Most people would understand what is meant by the term.

32. The school’s previous arrangements enabled the decision as to whether the faith-based oversubscription criteria were met to be made on the recommendation of a Rabbi. Where the arrangements provide that recommendations are to be made by different Rabbis for different applicants, the oversubscription criteria must be described in such a way as to achieve objective consistency as between the different Rabbis. In other words, there is a much greater need for clear and measurable descriptors which are capable of only one interpretation insofar as is possible. Examples of objectively measurable criteria are daily Torah study, and daily attendance at communal prayer. A person either studies the Torah and attends daily communal prayer or they do not. The school has revised its arrangements, and has now adopted self-certification. Having done this, it is important that a self-certification process is followed in respect of each application. I have already said that the arrangements need to be revised so that they make clear that the school undertakes verification checks; the purpose of such checks; and what they comprise so that the arrangements are clear that self-verification is the only method used to determine compliance with the faith-based oversubscription criteria.

33. To a degree, there is an inherent tension between self-certification and objective measurement. Given that Charedi practice is to a large degree observed in the home, self-certification appears to me to be a reasonable means of determining whether such practice is observed. However, self-certification necessarily involves each applicant making their own assessment and judgment. Whether a person is genuinely committed to a particular religion, or form of religion, is something only that person can know. It is difficult in these circumstances to eliminate subjectivity altogether. The school’s current arrangements are an attempt to ensure that the necessary judgment is made by the persons who are best placed to make that judgment (namely the applicants); to ensure that applicants are as clear as they can be in making their judgment about whether they observe the required level of commitment; and to avoid setting out an exhaustive list in the arrangements. Setting out an exhaustive list risks rendering the arrangements becoming so lengthy that they become difficult to understand. **I have considered these arrangements as a person who is objective, and I find them to be as clear as can be reasonably expected for the reasons I have explained. Therefore I do not uphold this ground of objection.**

Other matters

34. I identified seven other matters which caused me to consider that the arrangements do not comply with the Code. Addressing each in turn:
- a) *The arrangements to do not set out the closing date for submission of the application form and SIF.* This appeared to render the arrangements unclear and therefore non-compliant with paragraph 14 of the Code. The school has informed me that the closing date for admissions is set out under a separate admissions tab where there is also a link to the SIF. Whilst I accept that the necessary information is available to parents, and that this is a relatively minor point, my view is that the closing date for applications and the link to the SIF should be set out in the arrangements themselves. Both are important aspects of the arrangements. If a parent failed to locate the SIF or submit an application before the closing date, this could adversely affect their application.
  - b) *The arrangements make no provision for late applications.* I was therefore unclear as to whether the arrangements treated applications made after the LA deadline in the same way as those made on time. This appeared to render the arrangements unclear and therefore non-compliant with paragraph 14 of the Code. The school's response was that the provision of late applications follows the procedure laid down in the local authority guidance and is incorporated by reference to the local authority application process. My view is that the treatment of late applications must be set out in the arrangements themselves in order to make them sufficiently clear to parents.
  - c) *'Agreed admission number' should be Published Admission Number or (PAN).* The school has agreed to correct this, and I am grateful to the school for its co-operation in this matter.
  - d) *The order of priority for non-sibling Charedi boys is unclear from the arrangements. Provision for this category of applicant is currently unspecified.* They appear to fall under 'Other boys'. This appeared to render the arrangements unclear and therefore non-compliant with paragraph 14 of the Code. The school has thanked me for pointing this out, and has revised the arrangements to include the category '*Other Boys who/whose family observe Orthodox Jewish (Charedi) practice*' which had been omitted due to a transcription error.
  - e) *It is unclear from the arrangements when distance will be used as a tie breaker, and when random allocation will used.* If it is the case that random allocation is used when two or more applicants live exactly the same distance from the school, the arrangements should say this. Distance is not listed as an oversubscription criterion. This appeared to render the arrangements unclear and therefore non-compliant with paragraph 14 of the Code. However, I accept the school's representations on this point, and the school has submitted some suggested revised text. I am grateful to the school for its co-operation in this matter.
  - f) *It is not clear from the arrangements how long the waiting list will be maintained for.* Paragraph 2.14 of the Code requires that a clear, fair and objective waiting list must

be maintained until 31 December of each school year in question. The school has said that the waiting list follows the procedure laid down in the local authority guidance, and is incorporated by reference to the local authority application process. However, the school has now inserted the appropriate date, and I am grateful to the school for its cooperation in this matter.

- g) *The arrangements state: "In the case of 2 or more applications that cannot be separated by the oversubscription criteria outlined above, the school will use random allocation as a tie breaker to decide between applicants. This process will be independently verified"*. This appears to fall somewhat short of the requirements in paragraphs 1.34 and 1.35 of the Code.

Paragraph 1.34 contains the following requirements: *"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, and that looked after and previously looked after children are prioritised"*. Paragraph 1.35 requires that *"the random allocation process **must** be supervised by someone independent of the school, and a fresh round of random allocation must be used each time a child is to be offered a place from the waiting list"*.

The school has explained that entrants to the random allocation will be listed on an Excel® spreadsheet by surname and a random number between 0 and 1 generated for each entrant using the 'Rand' function. Places will be allocated in descending numerical order. This detail will need to be inserted into the arrangements, and the arrangements must also be revised to explain how looked after and previously looked after children are prioritised.

- 35. In conclusion, I partially uphold this objection. I also find that there are other matters in the arrangements which I have drawn to the attention of the school because they do not comply with the Code. The arrangements will, therefore need to be revised as specified below.**

## Summary of Findings

36. I find that the SIF, which is part of the arrangements, is unclear about the purpose of providing the name and contact details of the Rabbi. While the school uses self-certification I find that there can be no justification for this. For these reasons the arrangements fail to comply with paragraph 14 of the Code and will need to be revised in order to include the information I have specified.

37. For the reasons set out above, I do not find that the arrangements are not objective and therefore unclear.

38. I find that there are other matters in the arrangements which fail to comply with the Code. The school has agreed to revise the arrangements in relation to some of these matters, and indeed has already made some changes. Outstanding matters which will need

to be revised are: the arrangements themselves must set out the closing date for applications, provide a link to the SIF, set out how late applicants will be treated, and explain the random allocation process including how looked after and previously looked after children are prioritised.

## Determination

39. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing board of Pardes House Primary School for Pardes House Primary School in the London Borough of Barnet.

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

41. By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 16 August 2019

Signed:

Schools Adjudicator: Dr Marisa Vallely