



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3723

**Objector:** Salford City Council

**Admission authority:** The Academy Trust for Beis Yaakov Jewish High School

**Date of decision:** 23 February 2021

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2021 determined by the Trust for Beis Yaakov Jewish High School, Salford.**

**I have also considered the arrangements in accordance with section 88I(5) and find there are 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 Salford City Council, (the objector), about the admission arrangements (the arrangements) for Beis Yaakov Jewish High School (the school), an academy school for girls aged between 11 and 16 for September 2021. The objection concerns the consultation which took place before the determination of the school's admission arrangements for September 2020, which the objector says was defective. The objector says that since a change made to the 2020 arrangements following this consultation to remove a named feeder primary school remains in the 2021 arrangements in unchanged form, these arrangements are unlawful because they have not been determined in accordance with the requirements of the School Admissions Code (the

Code) in paragraphs 1.42 to 1.45 concerning the consultation which must take place when changes are proposed to admission arrangements. I take the objection to be about the lawfulness of the removal of the named feeder school, and have informed the parties of this view.

2. The local authority (LA) for the area in which the school is located is Salford City Council. The LA is the objector in this case, and so is a party to this objection. Other parties to the objection are the admission authority for the school, the school and its religious authority which is Machzikei Hadass Synagogue, Manchester (the Synagogue).

## Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis.

4. The objector submitted their objection to these determined arrangements on 15 May 2020. 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, but not on the grounds stated by the objector. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## Procedure

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

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

- a. written confirmation that a sub-committee of the school's governing board determined the arrangements on behalf of the Trust;
- b. a copy of the determined arrangements, which include the Supplementary Information Form (SIF);
- c. the objector's form of objection dated 15 May 2020;
- d. the school's response to the objection;
- e. confirmation of when consultation on the arrangements last took place;
- f. correspondence with the school's faith body;
- g. recent admission data for the school provided to me by the school and by the LA;
- h. a copy of the Statutory Instrument made for the school in 2004 designating it as a school with a religious character, and

- i. information received during a meeting I convened on 10 December 2020, which took place remotely, and in correspondence subsequent to it from the LA and from the school.

## The Objection

7. The objector set out in a form of objection that the school had consulted in late 2018 and early 2019 on its intention to determine admission arrangements for September 2020 that included Broughton Jewish Cassels Primary School as a feeder school. When those arrangements were determined, this school was not named as a feeder school. The school did not consult again prior to determining its admission arrangements for September 2021, which were unchanged from the 2020 arrangements and so did not include Broughton Jewish Cassels as a feeder. The objector submitted their objection to the school's admission arrangements for September 2021 on the grounds that the removal of the primary school had constituted a change which was not the subject of prior consultation, as required under paragraphs 1.42 to 1.45 of the Code.

8. By the time the objection was made I had jurisdiction in relation to consultation only in relation to any consultation required before the determination of the 2021 arrangements and not the 2020 arrangements. The arrangements for 2021 were the same as those for 2020 so no requirement for consultation had arisen. I cannot make any finding on the consultation carried out prior to determination of the 2020 arrangements.

9. When the school was notified of the objection, it was not asked to comment on it at that point, but nevertheless chose to do so. It stated that it did not dispute the objection. The school told me that it had misunderstood the requirements of the Code concerning consultation and the determination of admission arrangements, believing that it would have fulfilled its duty provided it reflecting on any consultation responses prior to determining its arrangements and could then make changes as it saw fit, including changes which had not been signalled in its consultation. It has told me that its view now is that it believes that any changes then made would need to be the subject of further consultation. I make two comments on this. First, it is not the case that an admission authority must determine arrangements which are completely the same as those consulted on. One of the key purposes of consultation is to secure views on what is proposed and, having done so, to take those views into account. So it would be quite in order for an admission authority to determine a set of arrangements which were not those consulted on in order to respond to points made in the consultation, although that would not have been the case here. I also note that paragraph 1.43 says that consultation “**must** last for a minimum of six weeks and **must** take place between 1 October and 31 January determination year”, so I record for the avoidance of doubt that if a school chose to hold a second consultation on its arrangements for a given year, any such second consultation would still need to have been completed by the school before the end of the period for consultation which the Code specifies.

10. When I wrote to the parties, I explained that I had no jurisdiction to consider whether the removal of the primary school as a feeder school contravened the Code on the grounds

put forward by the objector (that is because of the consultation carried out before the change concerned) for the reasons set out above. I did however say that it seemed to me that the removal of the primary school as a feeder school may have rendered the arrangements unfair, and so contrary to the requirements of paragraph 14 of the Code, which says that:

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

11. I also informed the parties at that point, having considered the arrangements as a whole, that it appeared to me that there were a number of other matters which did not, or may not, conform with the relevant requirements, as I shall now describe.

## Other Matters

12. The matters which I raised with the school as possibly failing to comply with the requirements concerning admission arrangements were:

- (i) Whether the priority given to looked after and previously looked after Charedi girls was compliant with the requirement of paragraph 1.37 of the Code in view of the school’s designated religious character;
- (ii) Whether some aspects of the standards of dress for Charedi girls are capable of being tested in an objective manner, and therefore able to conform to the requirement of paragraphs 14 and 1.8 of the Code concerning the objectivity of admission arrangements and of oversubscription criteria contained within them. The phrases which are of concern were:
  - “very straight or figure hugging dresses”;
  - “Very long skirts and dresses”;
  - ....” must not be tight or very brightly coloured but should add an air of dignity and finesse...”;
  - “casual garments and footwear”, and
  - “the ideas of modesty and the true dignity of a Charedi Jewish girl.”

I also explained that the arrangements themselves should be clear, and not require reference to external documentation.

- (iii) Whether the requirements set out in the arrangements concerning “mothers” and “fathers” are compliant with the provisions of equalities legislation and therefore with paragraph 1.1 of the Code, since parental responsibility for a girl may not be exercised as implied by the arrangements;
- (iv) Whether parental religious observance requirements are clear, since no duration for the specified attendance on Shabbos, Yom Tov and the three daily prayers is stipulated.

13. I informed the parties that I had accordingly decided to exercise my power under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions.

14. At the meeting which I held with the parties I explained that on further consideration it seemed to me that there were additional matters which were also of concern, namely:

- (i) Whether the religious activities which are taken into account in deciding on admissions meet the requirements in paragraphs 1.9i) of the Code;
- (ii) Whether the requirement that fathers of girls seeking admission to the school must be members of an Charedi synagogue conformed with the provisions of equalities legislation, and
- (iii) Whether the request for details to be provided by some applicants via the school's SIF of a Charedi Rabbi and of two Charedi referees conformed with the requirements of paragraph 1.9a) concerning matters which might be taken into consideration in respect of applications.

## Background

15. The school was founded as an independent school in 1957, and entered the state-funded system as a voluntary aided school in 2005. A Statutory Instrument was made for the school on 23 July 2004 by the Secretary of State, designating it as a school with a religious character of Jewish. It converted to academy status in 2012. Sections 6(7) and 6(8) of the Academies Act 2010 make provision that when a voluntary aided school with a religious character does this, it is to be treated as being an independent school with the same religious character. The school therefore has a religious character which is Jewish. I record here that at the meeting which I held, surprise was expressed by representatives of the school that it is not designated as "Charedi" in character.

16. The school's determined admission arrangements for 2021 state that its Published Admission Number (PAN) is 55. They say that the school "exists to meet the needs of Charedi (strictly Orthodox) Jewish families who desire a Charedi Jewish education for their daughters." They provide the following definition:

"In these arrangements 'Charedi girl' means a girl who is a member of a Charedi family and lives in accordance with Charedi principles and ethics. The definition of Charedi is as follows:

A distinct group within the Jewish community distinguished by cultural differences and strict adherence to and practice of Orthodox Judaism. ....Every aspect of their life is governed by the codes of Torah observance, and is based on the three tenets of Judaism 'Torah, Prayer and Acts of loving kindness'."

17. The arrangements go on to state what "Charedi principles and ethics require" in terms of the strictly limited access which children in a Charedi home are permitted to have

to the media and to all forms of electronic and other forms of communication, including cinema, theatre and written material. They provide a definition of “unsuitable material” which assists the clarity of this part of the arrangements.

18. The next section of the arrangements is as follows:

“Mothers and girls will dress at all times in accordance with the strictest standards of Tznius (modesty) as outlined below;

A. Dresses & Skirts • Dresses and skirts should cover the knees even when walking or sitting. • Very straight or figure hugging dresses/skirts are forbidden.\* • A dress or skirt may not have any slits, even if the slit only starts below the minimum length. • Very long skirts and dresses e.g. Maxi skirts/dresses, are not accepted in the Charedi community.\*

B. Sheitels / Hair • Mother’s hair must be completely covered at all times.

C. Necklines must not be open below the collarbone.

D. In general, clothing must not be tight or very brightly coloured but should instead add an air of dignity and finesse to the wearer.\*

E. Sleeves must cover the elbows at all times.

F. Tights should be worn at all times and it should be apparent that they are being worn. Ankle-length socks are unacceptable even over tights. Leggings may not be worn, even under a skirt.

G. Coloured nail varnish should not be used. School aged girls should not wear makeup.

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

Certain items cannot be reduced to specific guidelines. Care should be taken that the style and manner of dress conform to the ideas of modesty and the true dignity of a Charedi Jewish girl.\*

Fathers must belong to a Charedi synagogue and attend all prayers on Shabbos, Yom Tov and the three daily prayers. Likewise attendance in synagogue should be appropriately dressed i.e. with a jacket and hat. Set times for daily Torah sessions are an essential part of a Charedi environment.

\*For a practical guide in relation to Tznius and deportment, please refer to the book Modesty: An Adornment for Life by Rabbi Pesach Eliyahu Falk.”

19. The oversubscription criteria are provided as follows:

“If there are more applications than places available, the governing body will admit pupils in accordance with the faith based oversubscription criteria set out below:

Applicants wishing to be considered for Charedi priority in accordance with these criteria should complete the School Supplementary Information form (SIF) proving their commitment to Charedi practice as laid out ..... above. Siblings of existing pupils applying for a school place at the school will also have to complete a SIF. The school retains the right to request confirmation of the above from the Rabbi of the synagogue which the parent(s)/guardian(s) attend(s) or from a Charedi Rabbi who is well acquainted with and knows the family and from the Charedi references that the applicant provides. ....

1. A looked after, or previously looked after Charedi girl (as defined)
2. Charedi girls with siblings currently at the School (as defined)
3. Charedi girls who have attended Yesoiday Hatorah School (Sedgley Park Road, Prestwich).
4. Charedi girls of staff employed by the school who have been employed for two or more years by the 1st September of the year of entry.
5. Other Charedi girls
6. Other looked after girls or previously looked after girls (as defined)
7. Other girls “

The arrangements use a defined catchment area as a tie breaker between applicants if the school becomes oversubscribed within any of these oversubscription criteria, with those living in the catchment area given priority. Random allocation is used if there are insufficient remaining places for those living in the catchment area.

## **Consideration of Case**

### **Whether the arrangements are fair**

20. I shall consider first the objection concerning the absence of Broughton Jewish Cassels Primary School as a feeder school from the arrangements. It had previously, that is prior to 2020, been listed together with Yesoiday Hatorah School under the third oversubscription criterion. When the school wrote to me following the objection it proposed that it should consult on its arrangements for 2022, but adopt for 2021 those which had applied before the removal of Broughton Jewish Cassels Primary School as a feeder school in 2020. When the school provided me with acceptable evidence of the determination of its admission arrangements for 2021, I explained that since the arrangements had been so determined, it was not then open to the school to vary them other than as provided for in paragraph 3.6 of the Code. This allows an admission authority to vary determined arrangements under certain circumstances, including as a response to an adjudicator's determination concerning them. The arrangements which I am considering are therefore as summarised above, and do not include Broughton Jewish Cassels Primary School as a named feeder school.

21. My own concern, as expressed above, was that the arrangements as determined may be unfair in the absence of Broughton Jewish Cassels Primary School as a named feeder school. That would be the case if the revised arrangements led to there being an unfairness to a particular group, in this case girls who have attended Broughton Jewish Cassels Primary School and who might previously have sought and obtained a place at the school. There would be an unfairness if such girls were, as a result of the removal of their primary school as a feeder school, unable to secure appropriate secondary schooling within a reasonable distance of their homes, for instance.

22. I have therefore asked the school and the local authority to provide me with information concerning applications for places at the school in recent years, the allocation of the available places in those years against the school's oversubscription criteria and, for admissions in September 2020 the alternative schools which were offered to girls who had attended Broughton Jewish Cassels Primary School but who were refused a place.

23. The number of first preferences and the allocation of places against the school's oversubscription criteria has been:

<b>PAN = 55</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Number of First Preferences	73	73	67	83
Looked after and previously looked after girls	0	0	1	0
Girls with siblings	33	33	18	23
Girls attending a named feeder school (number having attended Broughton Jewish Cassels)	22 (5)	22 (2)	36 (3)	31 nil

24. In 2020, one further girl was admitted under the next oversubscription criterion as the daughter of a member of staff, indicating that the school was not oversubscribed by applicants who had attended the single feeder school named in the arrangements. So at least one girl from Broughton Jewish Cassels Primary School would have been likely to have obtained a place at the school in this year had the school been named as a feeder school, and of course, more – all those living who had attended this primary school who

lived in the designated catchment area - would have been included in the then much larger group from the two feeder schools to whom the random allocation process would have been applied for the remaining places. The number of girls admitted under the feeder school criterion from Broughton Jewish Cassels Primary School in previous years is shown above in brackets.

25. The local authority has told me that in 2020 twelve girls who had attended Broughton Jewish Cassels Primary School were refused a place at the school. Of these, ten lived within a mile of the school, and eleven of the twelve were offered alternative schooling within 1.5 miles of their home. The twelfth was offered a school within 3 miles of her home. Two of the twelve accepted the alternative offer, and the remainder have been admitted to a Jewish independent school, eight having expressly refused their alternative offer because it was not a Jewish school.

26. It does not seem to me that the information above provides evidence that the girls from Broughton Jewish Cassels Primary School who sought a place at the school in September 2020 but were refused were, as a result, subject to any unfairness. Each was offered a place at an alternative school within a reasonable travelling distance from their home, albeit not a place at another Jewish school. As a result, I do consider that the arrangements are unfair, and so I do not uphold the objection which has been made concerning them.

### **Whether the arrangements comply with requirements concerning looked after and previously looked after girls**

27. I turn now to the matters set out above which I have raised with the school, either in correspondence or at the meeting which I held. I have given the details of the Statutory Instrument which was made for the school when it entered the state-funded system of schools as a voluntary aided school, which designated it as a school having a faith character of Jewish. Paragraph 1.37 of the Code has the following to say:

“Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.”

This is set out more plainly in the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations), where regulation 9, cited as a footnote to paragraph 1.37 of the Code, refers to children “of the same faith as that of the school according to its designation”, making it clear that the term “the faith” in the Code means the faith character of the school, as designated. The school’s arrangements do not give priority to all looked after and previously looked after Jewish girls, but only to those who are Charedi, and as the arrangements also make plain,

this does not include all Jewish girls. As a result, the arrangements fail to comply with the requirement set out in paragraph 1.37 of the Code.

### **Whether aspects of the arrangements are objective**

28. When the school responded to my concerns about the objectivity of the five phrases contained in the arrangements, and which I set out above, concerning standards of Tznius (modesty), its reply was as follows:

“While it is a given that admissions arrangements need to be clear, objective and capable of being tested in an objective manner, the purpose of these lines was to explicate the definition of the Charedi lifestyle and its expected dress code.

In reality, the admissions authority would not be able to refuse Charedi priority on the basis of any standards that cannot be tested objectively and evidenced. This should not though prevent the school from seeking to elucidate the rules and standards required by the religious group to which it belongs.”

29. The first question before me in the light of this response is the extent to which the five phrases are, or are not, material elements in determining which girls will be admitted to the school. The school implies that they are not when it says that the phrases serve the purpose of elucidating the rules and standards of the religious group to which it belongs, and that it would not be able to refuse a girl on the basis of something which could not be “tested objectively and evidenced”. It implies therefore that they are not a material part of the arrangements, assuming for a moment that it agrees with my concern that these five phrases in particular cannot be so tested. However, the arrangements make direct and explicit reference to all of the descriptions of Tzinius contained in the arrangements in the introduction to the school’s oversubscription criteria, as follows:

“Applicants wishing to be considered for Charedi priority in accordance with these [oversubscription] criteria should complete the School Supplementary Information Form (SIF) proving their commitment to Charedi practice as laid out in number 2 [which includes the description of standards of Tznius].”

30. The SIF (which I shall return to below) requires an attestation that “I/we meet the Charedi criteria as prescribed by the Vaad Harabbinim and detailed in number 2 of the school’s admission policy”. I shall also return to the role of the Vaad Harabbinim below.

31. It seems to me to be evident that a parent reading what is set out in the arrangements would make the link between the attestation to Tznius observance in the SIF and the full description of what that consists of, including the five phrases which I have highlighted. That is to say, to a reader, these form part of what is required to evidence Charedi practice in order to be given priority under the school’s oversubscription criteria which employ this requirement. I am therefore not able to pass over the question of the objectivity of these descriptions of aspects of Charedi practice, as the school invites me to.

32. Paragraph 14 of the Code says:

“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 ....and comply with all relevant legislation, including equalities legislation.”

Paragraph 1.37 of the Code also says that:

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

The Code does not provide a definition of “objective”, but I take it to have the everyday meaning of that word when applied to the context in which it appears in the Code. It is a requirement that applies to all oversubscription criteria, whether faith-based or not, and it means that oversubscription criteria which might reasonably be understood differently by different people are not permitted.

33. It follows from this that what is required to reasonably satisfy a faith-based oversubscription criterion cannot depend on subjective judgement, any more than it can for any other oversubscription criterion. It is also the case, in my view, that the Code requires this simplicity of understanding to be an aspect of the admission arrangements themselves, which should not therefore require a parent to have to refer to an external reference work, such as that of Rabbi Falk which the arrangements cite, in order to understand how to satisfy them. It is of course appropriate for the admission authority for a school with a religious character to be able to describe, as the school puts it “the rules and standards required by the religious group to which it belongs”, but that is a separate matter from what it is permitted to say when setting out its admission arrangements, which must themselves be objective in nature and easily understood by parents reading them.

34. The Synagogue told me that it supports the response of the school concerning the description of aspects of dress and comportment included in the arrangements, saying:

“These points, while difficult to test objectively, are very much at the heart of accepted Charedi requirements.”

The Code however, as I have said, insists on oversubscription criteria being objective. A school’s admission authority is required to ensure that the satisfaction of any faith-based oversubscription criteria which it uses does not rely on any subjective judgements. If necessary, the admission authority may need to grapple with different understandings of what a religion’s practice might require before it can satisfy this requirement. The arrangements say that “Certain items cannot be reduced to specific guidelines.” If that remains the view of the admission authority, then such items may not appear as part of the faith-based admission arrangements for the school, if these are to comply with the Code.

35. It is my view that the descriptions of the aspects of Charedi practice in the school’s determined arrangements which I have highlighted cannot be said to provide an objective

standard which prevents them from being interpreted differently by different people. I have therefore come to the view that the requirements of the Code in paragraphs 14, 1.8 and 1.37 are not complied with in the descriptions of Tznius observance to which I have referred.

### **The use of religious activities in faith-based admission arrangements**

36. I have already explained why the school's religious character, in law, is Jewish, and not Charedi Jewish and why there is a clear consequence of this fact as far as the admission of looked after and previously looked after girls is concerned.

37. The school gives priority to girls who are Charedi Jewish, as I have set out above. When I met representatives of the school and the local authority, I referred to the general provisions in the Code in paragraphs 1.36-1.38 that apply to all schools which have a religious character, and which set out the role which the body or person representing the religion or religious body for the school has with respect to the school's admission arrangements. I also made specific reference to paragraph 1.9i) of the Code which provides an exemption in the case of schools with a religious character from the general requirement that admission authorities must not take into account the past or present hobbies or activities of children or their parents. It says :

“.....schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination.”

38. I explained that this meant that any religious activities which are to be taken into account by the admission authority for a school, in addition to meeting the requirement concerning objectivity, must also meet that of having been laid out for that purpose by the religious body for the school. I referred to the clarification of the phrase “laid out” 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 – ie ‘specifically provided for in or authorised by’ such guidance.”

I infer from this that guidance should be in written form, and should be clear enough for the admission authority to identify which specific religious activities its religious authority permits it to take into account. I stated that this was my view to the parties.

39. I also referred in the meeting to correspondence between myself and the school's religious authority, which is Machzikei Hadass Synagogue, Manchester (the Synagogue). I had asked to be provided with a copy of any general or specific guidance on admissions given to the school, and received the following reply:

“Rather than provide general or specific guidance, Machzikei Hadass Communities expects schools under our agis to prepare their own admissions policy and forward it to us for comment or approval by our Rabbinical Panel.”

This Rabbinical Panel is the Vaad Harabbanim which was referred to above, and which the Synagogue has told me has given its approval to the school’s admission arrangements (although no more recently than 2018).

40. In other words, as I explained at the meeting, I have been told that there is nothing which the religious authority has provided to the admission authority which satisfies the requirements of paragraph 1.9i) as defined in the Cobb judgment. There is no document from which the admission authority can ascertain those “religious activities” which can qualify for use in faith-based oversubscription criteria in its admission arrangements, and this is not compensated for by the religious authority having approved the arrangements after they were determined, since that is not the process for arriving at faith-based admission arrangements which the Code authorises. The Code, together with the Cobb judgment, means that there is required to be something published by the religious body which sets these matters out. It is my view that all of the matters set out in the arrangements which are said to define “Charedi principles and ethics” are religious activities that fall under paragraph 1.9i), and that in the absence of written guidance from the faith body which specifically authorises their use, they may not be employed by the school.

### **Whether the requirements set out in the arrangements concerning mothers and fathers are compliant with the provisions of equalities legislation**

41. The arrangements set out specific requirements relating to both the mothers and fathers of girls, in the way I have described. The school responded to my concern that these may not conform with the requirements of equalities legislation by saying that the descriptions are there to ascertain whether a girl’s parents/guardians are practicing Orthodox Jews, and that there are different requirements for women and men. It said that “depending on the family structure, any parent would be considered. It should be self-evident that single parent families would not be discriminated against.”

42. At the meeting, I said that while I fully accepted the school’s explanation of its practice, my concern had been that it seemed to me that it was anything but self-evident when reading the arrangements that there were not specific expectations concerning the different parents/guardians of a girl seeking a place. On the face of what is written in the arrangements, this is what they appeared to a reader such as myself to say. At the least, I explained, those who might feel they could not meet what appeared to be such expectations might in my view be discouraged from seeking a place at the school for their daughter.

43. The descriptions which are present in the arrangements form part of the description of Charedi principles and ethics in the arrangements and therefore are religious activities which must be subject to the requirements which I have set out above. The arrangements

should also make explicit, given that they make unqualified requirements concerning both mothers and fathers, that parenting/guardianship arrangements and family structures are not themselves relevant to decisions about admissions to the school, as it has told me is the case. However the arrangements do not do so and it is my view that, in the absence of such qualification, the arrangements as determined do not make it clear that the school acts in accordance with paragraph 1.1 of the Code, which requires it to comply with equalities legislation.

44. I also considered that the requirement in the arrangements that the fathers of girls seeking a place must be members of a Charedi synagogue might be in conflict with equalities legislation, and raised this at the meeting. I also raised my concern that it was my understanding that membership of a Charedi synagogue was open only to a person who was halachically Jewish, and that it was normal for a fee or a subscription to be paid. Following the meeting, I wrote to the school seeking answers from it (or from its religious authority) to the following questions:

- (i) Who is eligible for such membership – is this available equally to all, irrespective of gender ?
- (ii) Whether there is a requirement that such a person be halachically Jewish
- (iii) Whether the payment of a fee, or the making of a financial contribution, is required either on joining the synagogue or subsequently ?

45. The reply which I received from the school was as follows:

“I have discussed these questions with the school’s religious body (Machzikei Hadass) and the information below broadly represents the requirements that one would find among its constituent synagogues. There are no standardised procedures or requirements for membership of a Charedi synagogue. With regard to your specific questions, the answers may vary between synagogues, but the religious body has said that the information below holds for their constituent synagogue.

- (i) Membership is available to anyone, irrespective of gender or marital status. It is available to single or married men and single or married women.
- (ii) Membership of a Charedi synagogue is intended only for those who are halachically Jewish. However, proof of Jewishness (whether by birth or conversion) is not usually requested and membership will tend to be granted based on full Charedi practice and adherence to Jewish Law.
- (iii) The payment of a particular fee is not necessarily a prerequisite for synagogue membership, although it is generally understood that members will make regular voluntary contributions.”

46. While I am grateful to the school and to the Synagogue for providing me with this detailed reply, I am bound to say that it is somewhat equivocal in nature, except with respect to the clear statement that synagogue membership is not dependent on gender or marital status. Those who are halachically Jewish are those whose mothers are Jewish. The Supreme Court has ruled that school admission arrangements that make this a condition of eligibility for a school place are in breach of the Race Relations Act 1976 in the

Jewish Free School case (R (E ) v Governing Body of JFS [2009] UKSC 15). The school's admission arrangements say "Fathers must belong to a Charedi synagogue", and so even if the particular constituent synagogue in this case would not usually require a person to be halachically Jewish, my understanding is that this is nevertheless more normally a requirement concerning Charedi synagogues, and the school's, reply leaves it open for this to be a requirement here too.

47. Paragraph 1.9e) of the Code says:

".....admission authorities...**must not**:

e) give priority 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."

The "understanding" that members of synagogues will make regular voluntary contributions to it does in my view fall foul of this prohibition.

For both these reasons, therefore, the requirement in the arrangements that a girl's father be in membership of a Charedi synagogue (or indeed that any parent/guardian be in such membership) is contrary to both the Code and to equalities legislation.

### **Whether parental religious observance requirements are clear**

48. The school responded to my concern that parental religious observance requirements may not be clear as a result of there being no specified duration for the attendance on Shabbos (Sabbath), Yom Tov (Holy Day) and the three daily prayers that is required by the arrangements of "fathers". It said that:

"Duration surely need not be specified as it is clear in Jewish Law and practice what these requirements are and this can be tested objectively."

49. It referred me to what it said were the typical admission arrangements for schools with a Church of England religious character which it said used phrases such as "regular attendance", and it said that the requirement of attendance at daily and Shabbos and Yom Tov prayers in its own arrangements was "much clearer".

Paragraph 1.37 of the Code requires that:

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

This means that if a school with a religious character gives priority to applicants based on the religious observance of their parent/guardian, it must be set out in the public document which is the school's published admission arrangements what it is necessary to do in order to be given that priority. It seems to me to be evident that such a description, whether this be in a Jewish, a Christian or any other religious setting, would need to set out both what is required in terms of frequency of practice (as the school's arrangements do, and clearly),

and also to specify for how long that practice needs to have been undertaken. Without this second element, it might be thought that the required practice for only the shortest duration might satisfy the religious observance requirement, and I am sure that this is not the intention here. If, as the school says, Jewish Law provides a duration of practice, then I see no reason why this cannot be stated as part of the arrangements. However, as determined, they do not do this and so fail to meet the requirement of paragraph 1.37 of the Code. I observe in passing that Church of England schools and indeed those of other Christian denominations have in past adjudicator determinations been found similarly not to comply with the requirements relating to admission arrangements for exactly the same reasons – not setting out the frequency and/or duration of attendance at public worship required to secure priority for a place.

## The school's SIF

50. The arrangements require a parent who wishes to be given Charedi priority to complete the school's SIF, "proving their commitment to Charedi practice". The means by which this is done is that the form asks the applicant to attest to the statement : "I/We meet the Charedi criteria as prescribed by the Vaad Harabbanim and detailed in.....the school's admission arrangements."

The school confirmed to me at the meeting that it understands that this is a process of self-certification by applicants. It seems to me that self-certification in these circumstances is inevitable, given that the parental attestation refers to matters set out in the arrangements which take place in the home. Provided the matters to which the parent is giving their confirmation are themselves capable of being judged objectively (an example from the arrangements would be the requirement that "School aged children do not watch television"), I see no reason why this would not be an acceptable approach.

51. However, the SIF goes on to ask both for the name and contact details of the Rabbi of the synagogue which one of the parents attends or of a Charedi Rabbi who is well acquainted with the family. Further, it asks for the name and contact details of two Charedi referees "who are well acquainted with and know your family".

At the meeting, I explained my concern that such information is obtained from all applicants seeking Charedi priority. First, when the Code sets out the circumstances under which a school may use a SIF, it says, in paragraph 2.4:

"....admission authorities....**must** only use supplementary information forms that request additional information when it has a direct bearing on decisions about oversubscription criteria..."

52. The school's SIF makes it plain that information about Rabbis will not be used in every case, since this is a process of self-certification. It says:

"The school retains the right to request confirmation of [the attestation] from the Rabbi....and from a Charedi reference ...."

Second, if the information is not used in every case, it must not be collected in every case. This is personal data and its collection may be in breach of the Data Protection Act 2019 as well as contrary to the provisions of the Code. It is of course perfectly reasonable for the school to carry out random checks with a Rabbi, and to reserve the right to seek information that would make this possible at the time, and to state this on the SIF.

53. The SIF refers, as I have said, both to the Vaad Harabbanim and to the identification of Charedi references for applicants. The arrangements also say of the Vaad Harabbinim that:

“Any dispute as to (i) whether a girl is Jewish, or (ii) an interpretation of Orthodox Jewish/Charedi traditions and practice is in keeping with the above definition, will be settled by reference to the Vaad Harabbanim (a panel of three Rabbis) appointed by the Machzikei Hadass of Manchester.”

It is of course entirely appropriate that a religious body should make decisions of this sort with respect to their faith, but it is for the admission authority of a school, and not a religious body, to determine admissions to a school. It is for this reason that the admission arrangements for a school with a religious character must be clear and objective, and capable of being understood by parents reading them, as I have set out earlier in this determination. A school admission authority must make its own decisions, and in a transparent way that must be set out in their determined and published admission arrangements, albeit that of course those arrangements have been determined in accordance with the guidance of the faith body. It is also appropriate for a representative of the religion (a Rabbi) to confirm that the requirements set out plainly in a school’s admission arrangements have been complied with, and they would certainly be in a position to do so concerning attendance at prayers, for example. It would, however, be inappropriate for an individual case to be referred to a faith body for a decision affecting their admission to a school that was based on anything other than what is set out in the school’s arrangements. And, again, the arrangements themselves must be sufficiently clear and objective in character that the satisfaction of them is a matter of fact capable of verification by a person qualified to do so, and not a matter of interpretation.

54. It is equally inappropriate for someone other than a minister of the faith to provide confirmation that an applicant’s religious practice does or does not comply with what is set out in a school’s faith-based admission arrangements, since they are not qualified to do so. This practice renders the process of ensuring that applicants afforded priority under the school’s arrangements are legitimately entitled to such priority, however well-intentioned, both unclear and susceptible to abuse. Paragraph 1.9a) of the Code requires that admission authorities:

“**must not** ...place any conditions on the consideration of an application other than those in the oversubscription criteria in their admission arrangements.”

For the reasons I have given, the request in the school’s SIF that all applicants seeking Charedi priority for their daughter provide details of a Rabbi and of Charedi references does not comply with what the Code requires.

## Summary of Findings

55. I find that the arrangements are not unfair as a result of the absence of Broughton Jewish Cassels Primary School as a named feeder school.

56. I have explained the reasons why the admission arrangements for a school with a religious character must:

- (i) be mindful of the school's faith designation;
- (ii) contain only oversubscription criteria which are objective in character;
- (iii) give priority on the basis of religious activities carried out by parents or children only if these have been laid for this purpose by the school's religious authority;
- (iv) comply with equalities and other legislation;
- (v) provide clear definitions of any religious practice requirements;
- (vi) only seek information from applicants which complies with requirements set out in the Code.

57. I have set out my reasons for finding that the school's arrangements fail to meet these requirements by:

- (i) not giving priority to all Jewish looked after and previously looked after girls;
- (ii) including matters relevant to the satisfaction of oversubscription criteria which are not objective in character;
- (iii) employing religious activities which have not been laid out by the school's faith body;
- (iv) including provisions relating to parents/guardians and synagogue membership which may breach equalities legislation;
- (v) not specifying the duration of required levels of religious practice by a parent;
- (vi) asking all applicants seeking priority as Charedi Jews to give details of their Rabbi, and by asking them for the details of Charedi references.

58. The school will need to revise its arrangements accordingly. In hope that it will do so as soon as possible. I am mindful that the national offer day for secondary school places for September 2021 is 1 March 2021 and that applications will have been made on the basis of the arrangements as they were determined and concerning which I have made this determination, not on the basis of the required revision of them. I would expect the school to make every effort to ensure that any disadvantage caused by the matters in those arrangements which I have found to fail to comply with the relevant requirements are minimised when it makes its decisions about the allocation of places at the school for

September 2021. The school's revised admission arrangements for September 2021 will remain relevant to admissions to the school for the remainder of the school year 2021/2022.

## Determination

59. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2021 determined by the Trust for Beis Yaakov Jewish High School, Salford.

60. 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.

61. 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: 23 February 2021

Signed:

Schools Adjudicator: Dr Bryan Slater