



## DETERMINATION

**Case references:** ADA3061 to ADA3079, ADA3081, ADA3084 to ADA3088, ADA3091 to ADA3094, ADA3096, ADA3103, ADA3193 to ADA3194

**Objectors:** A number of parents

**Admission Authority:** Yavneh College Trust for Yavneh College, Borehamwood, Hertfordshire

**Date of decision:** 26 September 2016

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for September 2017 determined by Yavneh College Trust for Yavneh College, Borehamwood, Hertfordshire.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I specify a deadline of 31 October 2016.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), 33 objections have been referred to the adjudicator by parents, about the admission arrangements (the arrangements) for Yavneh College, a Jewish academy secondary school for children aged 11 to 18 for September 2017. The objections are that the determined arrangements do not satisfy the school's stated objective; the consultation was flawed; the governing body did not have the authority to determine the arrangements; the catchment area is not reasonable, clear or fair; the arrangements are not compliant with the Greenwich judgment; parents had a legitimate expectation that the priority for children attending feeder schools would continue; and it was not necessary or fair to make changes to the arrangements for 2017.

2. The parties in this case are:

- a. Yavneh College Trust and its governing body (the school);
- b. Parents who have between them made 33 objections (the objectors). I use the term 'objectors' for simplicity in this determination. Although not all objectors have raised all parts of the objections there is consistency in the objections with 29 of

the objectors agreeing to a 'lead objector' speaking for them;

- c. The Office of the Chief Rabbi (OCR) of the United Hebrew Congregations of the British Commonwealth as the designated faith body for the school; and
- d. Hertfordshire County Council, which is the local authority (the LA) for the area in which the school is located.

### **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 governing body in its capacity as the directors of the academy trust company which is the admission authority for the school, on that basis. The objectors submitted their objections to these determined arrangements during March, April and May 2016. The objectors have asked to have their identities kept from the other parties and have met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and addresses to me.

4. The school has said that, "*Regulation 27(c) of the School Admission (Admission Arrangements) Regulations [2008] only permits parental objections to be made which relate to a mandatory aspect of the Code*" and so many of the matters raised are not in the jurisdiction of the adjudicator. I note that the 2008 Regulations have been revoked and that section 88H(3)(b) of the Act under which the former Regulation 27 was made has been repealed. The provision quoted by the school is thus no longer in force and the regulations which are in force do not contain such a provision. The current primary legislation and regulations do not limit the scope for parental objections as was the case under the 2008 regulations.

5. In 2015 an objection to the Office of the Schools Adjudicator (OSA) was made to the school's admission arrangements to the use of feeder schools as an oversubscription criterion. Determination ADA2935 was issued on 2 September 2015 and the objection was not upheld. Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, provide that: "*For the purposes of section 88H(5)(d)(a), where the adjudicator has determined an objection to the admission arrangements of a school or Academy, no objection may be referred to the adjudicator raising the same or substantially the same issues in relation to those admission arrangements within 2 years of the decision by the adjudicator.*" These objections are not the same or substantially the same as that in determination ADA2935.

6. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

7. There were other matters raised in the objections which are outside my

jurisdiction and which I have not considered further. These are any matters relating to:

- a. potential conflicts of interest within the governing body;
- b. meeting the requirements of the Funding Agreement and compliance with Academies Financial Handbook 2015; and
- c. meeting the requirements of the law with regard to Freedom of Information requests.

## **Procedure**

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

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

- a. the objectors' forms and letters of objection provided in March, April and May 2016; and subsequent communications from the objectors;
- b. the school's responses to the objections and supporting documentation; information provided by the school following my requests; and subsequent communications;
- c. the comments of the LA on the objections; and further information provided;
- d. the comments of the OCR on the objection; and its guidance on admissions dated January 2010;
- e. information on the school's, the LA's and Yavneh Primary School's websites;
- f. maps of the area: identifying relevant schools; showing the postcode areas WD and AL; and the location of potential Year 7 pupils as at 1 March for 2015 and 2016;
- g. data relating to the preferences made for entry to the school between 2011 and 2016 including home postcodes and allocation of places at the school;
- h. information on: the consultation on the arrangements for 2017 including minutes of meetings; responses to the consultation from other admission authorities; and the determination of the arrangements by the school;
- i. a copy of the determined arrangements; and
- j. other information brought to my attention by the objectors including:
  - a. responses to the consultation provided via an email address

- set up for this purpose;
- b. the admission arrangements of other secondary schools in the area;
  - c. previous determinations by the OSA: ADA2209 to 2231: Seven Stockport Schools; and ADA2935: Yavneh College;
  - d. the judgment of Cobb J in the case of R (on the application of London Oratory School Governors) v Schools Adjudicator [2015] EWHC 1012 (Admin) (the London Oratory judgment).
  - e. a paper by the Institute for Jewish Policy Research: *2011 Census Results (England and Wales), Initial Insights into Jewish Neighbourhoods*; and
  - f. case law relating to the doctrine of legitimate expectation and to Wednesbury unreasonableness; and the Greenwich and Rotherham judgments relating to what is now section 86(8) of the School Standards and Framework Act 1998.

10. I have also taken account of information received during a meeting I convened with representatives of the school, the objectors, the OCR and the LA on 14 July 2016 at the school (the meeting).

11. The objectors provided responses to the school's consultation on its arrangements made by some of those who did not support the proposed new arrangements. They were able to do this as such responses had been copied to a common mail box with, I have been told, this purpose in mind. I have not, however, seen all the responses to the consultation provided to the school because, unless the responses were copied to the mailbox set up by the objectors, those who responded would not have expected that their responses would be seen by any others than the school and anything that I see would be seen by all parties. The school has no summary of the consultation responses but did give me access to a public petition which they said was in support of their proposals.

12. There are many references in the objections to what was published in the Jewish Chronicle newspaper. It is appropriate for media to be used in a variety of ways to raise the profile of a consultation, such as the advertisements placed by the school. It is not, however, appropriate for an adjudicator to rely on articles written in the press when considering the opinions of the governing body or others and I have not done so. I have rather been informed by formal records such as the minutes of meetings and by what representatives of the governing body told me at the meeting or in correspondence during my consideration of the case. Insofar as there is any conflict between this material and the unsourced press articles, I prefer to rely upon the evidence provided to me by the school.

## The Objections

13. The 33 objections concern substantially the same matters with some aspects raised by some objectors and not others. I have summarised all the matters raised in the objections below with the relevant paragraphs of the Code in brackets. The arguments made in the objections are:

- a. The change of priority from those attending a feeder school to the use of a catchment area does not satisfy the stated objective of the school to provide places for the Jewish children of Hertfordshire (12, 14, 1.8 and 1.14).
- b. The school did not consult properly on changes to its admission arrangements. This is because the consultation was misleading; the school appeared to have made up its mind already and so was not properly consulting; the school did not listen to parents and Rabbis as it refused to meet their representatives to discuss the proposals and so also ignored faith body advice; it appeared dismissive of responses from parents; some of the information used by the governing body to inform its decision may have been inaccurate; not all governors may have read the responses to the consultation or understood the impact of the proposed changes; and overall the school did not meet the requirements of a consultation as laid out in the London Oratory judgment (12, 14 and 1.42 to 1.45).
- c. The governing body of the school did not have the authority to determine the arrangements as this should have been undertaken by Yavneh College Trust as that is the admission authority (1.46).
- d. The catchment area is not compliant with the Code as it is not reasonable and makes the arrangements unclear to parents, which is unfair, because there are many more Jewish children living in the catchment area than could be admitted to the school and only children living close to the school are likely to gain a place (14, 1.8 and 1.14).
- e. The governing body states that the catchment area is based on providing places for Hertfordshire children and preventing children from outside of Hertfordshire getting places. The boundary of the catchment closely follows the Hertfordshire/Barnet local authority boundary and so the arrangements breach the Greenwich judgment (1.14 and footnote 23).
- f. Families with children attending the schools that were named as feeder schools had a legitimate expectation of a place at the school and the timescale for change was unreasonable with significant distress and disruption for families. This is not fair (12 and 14).

- g. The consultation was described as being in response to the changed situation created by the opening of Yavneh Primary School which would not have had any Year 6 students transferring to the school until 2023 so the change was not needed at this point and thus was unfair (12 and 14).

## **Background**

14. Yavneh College was established in 2006 as a voluntary aided secondary school and converted to become an academy in 2011. The school describes itself as a Modern Orthodox Jewish secondary school and, as noted above, its religious authority is the OCR. It is the only state funded Jewish secondary school in Hertfordshire. The school is in the town of Borehamwood and close to the Hertfordshire towns of Elstree, Bushey, Radlett, Watford and Potters Bar. The school has a published admission number (PAN) of 150 and for September 2016 has accepted 180 students as a 'bulge' year.

15. There are two Jewish primary schools in Hertfordshire: Hartsmere Jewish Primary School (HJPS) with a PAN of 60 and Clore Shalom Primary School with a PAN of 30. HJPS has the same religious authority as the school; Clore Shalom's religious authority is the Jewish Community Day Schools Advisory Board. When the school was established these two primary schools were named as feeder schools and this situation remained until the 2017 arrangements were determined. Clore Shalom Primary School also became a feeder school for another school, the Jewish Community Secondary School (JCoSS) when it opened in 2010. Following the opening of JCoSS, demand for places at the school fell and it is only recently that it has been confident again of being full.

16. At the meeting the school described how the demand for places at the school has fluctuated since it was established. It started with a PAN of 90 and increased that number as demand increased; it has had a PAN of 150 for some years. The school said that at one time families would travel long distances to access Jewish secondary education or use private schools but the development of local Jewish state funded schools has reduced this tendency. Places have been sought at the school from Hertfordshire and beyond. Around one third of applications for place at the school have come from outside Hertfordshire, primarily from the London Borough of Barnet which is south of the school; the boundary with Barnet is just over two kilometres from the school.

17. There is a growing Jewish community in Hertfordshire and there are possibilities of other Jewish schools being opened although nothing is definite at this stage. Three Jewish secondary schools, JCoSS, Hasmonian High School and JFS are all around ten kilometres away from the school in the London Borough of Barnet. There is another secondary school in the town of Borehamwood and other secondary schools in the vicinity. Data from the LA shows increased demand for secondary school places in the area but that this demand can be met from within existing overall capacity.

18. The school was judged outstanding by Ofsted in 2011 and has been oversubscribed in the last three years. The school's oversubscription criteria for entry into Year 7 in 2016 were, in summary:

A. A looked after child or a child who was previously looked after, who obtained a minimum of three points on the Yavneh College Certificate of Religious Practice (CRP).

B. Other children who obtain a minimum of three points on the Yavneh College CRP.

C. Any other looked after child, or child who was previously looked after, who obtained fewer than three points on the Yavneh College CRP.

D. Any other children who obtain fewer than three points on the Yavneh College CRP.

In the event of over-subscription within each of the above categories B and D, places will be offered in accordance with the following further criteria:

1. Siblings of pupils attending (or who formerly attended) Yavneh College.
2. Children attending HJPS or Clore Shalom Primary School at the deadline for application.
3. Children of members of staff.
4. Children for whom Yavneh College is their nearest designated Jewish secondary school.
5. All other children.

The arrangements also provided that if it were necessary to differentiate further between children in any oversubscription category this would be on the basis of proximity of the home to the school.

19. Yavneh College Trust proposed a free school, Yavneh Primary School (YPS), to be on the same site as the school. Consultation and negotiation on this took place with the intention that YPS would open in September 2016. I now see from the website for YPS that it is planned to have its first intake in 2017. The intention was that reception aged children would join YPS year on year so the children joining YPS in September 2016 would be due to transfer to secondary school in September 2023. This will now presumably be 2024 but all comments quoted below were made on the expectation of September 2023 being the salient date.

20. Following deliberations and recommendations by the admissions committee, the governing body agreed on 17 November 2015 to consult on arrangements for admissions in September 2017. The consultation commenced 23 November 2015 with a given end date of 4 January 2016

which was later extended until 8 January 2016. The school also consulted through Hertfordshire County Council's co-ordinated consultation mechanism for all local admission authorities with this consultation commencing 23 December 2015 and ending 31 January 2016.

21. Following the consultation, there were further meetings of the admissions committee which discussed the "over 600 responses" to the consultation. The governing body determined the arrangements on 10 February 2016. The oversubscription criteria for entry into Year 7 in September 2017 were agreed, with A, B, C and D unchanged from above, as (in summary):

In the event of over-subscription within each of the above categories B and D, places will be offered in accordance with the following further criteria:

1. Siblings of pupils attending (or who formerly attended) Yavneh College.
2. Children of members of staff.
3. Children whose permanent home address is in the priority catchment area for the school. The priority catchment area will encompass addresses with the postcode prefixes WD and AL.
4. All other children.

Where it was necessary to distinguish further between children within any oversubscription category, this would be on the basis of proximity of the school to the home, with priority given to those who lived closest to the school.

22. The arrangements the school determined were the same as those upon which it consulted except that the school decided not to include amending the priority for siblings so that it included those children attending YPS. The school published its arrangements on 25 February 2016 and said, "The Governing Body consider that these proposals are in the best interests of Yavneh College and are the fairest and most appropriate way to serve the local community." In its communications to me the school has said, "The Governing Body considers that the new admission arrangements are both fairer and more straightforward." It also said, "Our starting point was to recognise that we simply cannot offer every applicant a place and that those who ultimately miss out will often instinctively feel that the system is unfair. Nevertheless we have a responsibility to create the most objectively reasonable set of criteria for admissions."

23. The removal of the feeder school criterion is the aspect of the changes that gives rise to the objections. Other changes made to the arrangements included the removal of the criterion relating to 'nearest Jewish school' and a change to the definition of staff. There were no objections relating to these aspects of the arrangements and I have not considered them further.



## Data

24. This case has generated a great deal of data relating to numbers of children, where they live, whether they attend a feeder school and how they are affected by the changes. The data are relevant to several aspects of the objections so I will review the data first as a whole and then refer to this section as I consider each aspect of the objections.

25. The school provided information on the number of children who had three points on the CRP used by the school in its arrangements. Since 2012 around 45 children each year have stated a preference without three points. The last time a child without three points secured a place was 2012. Thus my focus, and the focus of all parties, in this case is on children who do have three points.

26. The feeder schools, Clore Shalom and HJPS, have PANs of 30 and 60 respectively. Clore Shalom is also a feeder school to JCoSS. The school told me that JCoSS is phasing out the use of feeder schools in its oversubscription criteria and that this has led to an increased demand for places at Yavneh College from children attending Clore Shalom. In September 2013, 12 children from Clore Shalom took places at the school and the indicative figure for 2016 is 23. The numbers coming from HJPS have been more consistent but have increased from 50 in 2013 to 57 indicated for 2016. This means that in 2016, 80 of the 180 places were allocated to those attending feeder schools. The figure would have been the same if the PAN had been 150. This would have included siblings.

27. The objectors made requests of the school under the Freedom of Information Act and, among other papers and communications, obtained a document described as an impact table. This table was not provided as part of the consultation. Over time there were several versions of the impact table and the objectors closely analysed these at different stages and queried the accuracy and interpretation of the tables. The school has told me that an impact table based on 1 March (secondary school allocation day) for 2014 and 2015 was presented for discussion at the meeting of the admissions committee in October 2015. A table based on 1 September (take-up of places) data was provided for an admissions committee meeting on 4 February 2016 and the meeting of the governing body on 10 February 2016. There will be differences between the two tables. A table based on 1 March provides information on the initial allocation of places. A table based on 1 September provides information on the take-up of places. Some versions of the impact tables included explanatory notes.

28. The school said that the purpose of the tables was to inform the governing body "*how the proposed changes would have impacted on the number of applicants getting places from each of the local communities in Hertfordshire compared with the number under the existing admissions arrangements.*" The objectors say that the school did not sufficiently take account of likely demand for places in the future when it considered the impact of the changes, or, if it did, it chose to ignore the likely continued growth of the Jewish population in Hertfordshire. I will consider these questions later but will first consider what information there is and what it may

mean.

29. The objectors referred several times to the high number of preferences for the school. In Hertfordshire families make up to four ranked preferences and in the adjacent area of Barnet up to six. This approach (based on legal requirements) helps to ensure that as many children as possible are offered a place at a school their parents would like them to attend even if it cannot be the one they would like most of all. All applications are co-ordinated by the LA in which the parent lives in liaison with the LA in which the school is based (if different). While the LA will know how many of the preferences expressed for a school are first, second and so on preferences, schools know only the total number of preferences expressed and the details of those expressing a preference and not the ranking. A school for which most of the preferences expressed are low ranked may not actually be oversubscribed at all and it is important to look not just at total numbers of preferences but also the number of first preferences as in table one below for the school.

**Table one:** All and first preferences for Yavneh College

	2011	2012	2013	2014	2015	2016
All Preferences	503	451	459	477	513	540
First preferences	169	128	151	174	196	226

30. In 2012 of 451 preferences, 128 were first preferences which is 22 fewer than the school's PAN of 150. In 2013 the number of first preferences was about equal to the school's PAN. The number of first preferences has increased above the PAN in 2014, 2015 and 2016. This demonstrates rising demand for the school. It is not evidence that any particular level of demand will be sustained. It is also important to note that a child for whom the school is a first preference may not secure a place if there are children for whom the school was a lower preference but who have higher priority for places and cannot be accommodated at their own first preference school. In addition, there is no guarantee that a child offered a place will actually take up that place; some children may also have applied to fee paying schools; their families may move; or other changes in their circumstances may affect their decision.

31. The objectors told me that it was important to forecast future demand for places and provided data from a study printed in 2013 for the Institute for Jewish Policy Research on "2011 Census Results (England and Wales) Initial Insights in Jewish Neighbourhoods." The author of the study says that Britain's Jewish population is spread unevenly across the country so nationally 0.5 per cent of the population is Jewish but this rises to as much as 40 per cent in some places. One in five of the Jews who live in England and Wales live in Barnet with variations within that area too. As with other faiths, the Jewish faith includes a number of strands of belief and practice which will also affect which schools would be preferred by different parents.

32. The objectors also asked the author of the study for figures from the

2011 census showing the Jewish populations of Shenley, Radlett, Bushey, St Albans, Watford and Borehamwood. The author provided figures comparing the information from the 2001 census and the 2011 census. He did not include Watford. He advised that the information was raw census counts and that some allowance was needed for non-responses. The figures show that of the area in question that Bushey had the largest Jewish population with 4,549 in 2011 with Borehamwood next at 3,910.

33. The comparison of the towns showed that the number of Jews had increased in the ten years between 2001 and 2011 with numbers in Borehamwood increasing by 57 per cent from 2,489 to 3,910. Numbers in Shenley increased by 52 per cent from 572 to 867. Numbers in the other towns covered increased by between 25 and 31 per cent. The author commented, *“Other than haredi area (Stamford Hill etc) nowhere else in the country (and probably Europe) even approaches this kind of Jewish population growth.”* The census figures provided by the objectors do not show the ages of the population and so do not provide information on how the numbers might translate into children seeking a place at secondary school.

34. The objectors point out that in 2011 Jews living in Borehamwood are 25 per cent of Hertfordshire’s overall Jewish population, or *“in other words, 75 per cent of Jews living in Hertfordshire in 2011 did not live in Borehamwood.”* I note that the objectors asked the author of the study for information on specific towns so it is not clear to me if this includes the whole Jewish population of Hertfordshire. The statement made above is based on data that only includes the towns of Radlett, Borehamwood, Bushey, Elstree, Potters Bar, Shenley and St Albans. Watford, for example, is not included.

35. As the WD and AL postcodes were used by the school to form its catchment area I used the information available based on postcodes to form consolidated tables which were discussed at the meeting and are provided below. At the time of the meeting the data for 2016 was also considered but in the shared knowledge that this would not have been available to the school when it was making its decisions. The two postcode areas include 21 postcode districts, for example WD23 is a postcode district within the postcode area of WD.

**Summary of first preferences and allocations comparing 2016\* and 2017 criteria**

**Table two: 2014**

Possible effect in <b>2014</b> intake by area	Outside catchment area	Borehamwood and Elstree WD6	Bushey WD23	Shenley and Radlett WD7	Other WD and AL areas
a. First preferences expressed	48	53	29	35	6
b. Number of children allocated a place under	46	55	21	30	5

2016* criteria**					
c. Allocated a place under 2016 criteria* on feeder school or nearest Jewish school***	18 (none from feeder schools)	28	9	17	1
d. Would have been allocated a place under 2017 criteria on distance***	6	28	16	18	5
e. Difference between c and d (showing the possible impact of change)	Minus 12	0	Plus 7	Plus 1	Plus 4

\*2016 criteria means the criteria applied in 2014, 2015 and 2016

\*\* based on take up of places using information provided by the LA

\*\*\* based on school's impact table with data from 1 September 2014

**Table three: 2015**

Possible effect in <b>2015</b> intake by area	Outside catchment area	Borehamwood and Elstree WD6	Bushey WD23	Shenley and Radlett WD7	Other WD and AL areas
a. First preferences expressed	52	80	25	31	7
b. Number of children allocated a place under 2016* criteria**	32	78	10	24	6
c. Allocated a place under 2016 criteria* on feeder school or nearest Jewish school***	11 (none from feeder schools)	47	1	14	3
d. Would have been allocated place under 2017 criteria on distance***	0	47	8	21	0
e. Difference between c and d (showing the possible impact of change)	Minus 11	0	Plus 7	Plus 7	Minus 3

\* 2016 criteria means the criteria applied in 2014, 2015 and 2016

\*\* based on actual take up of places with information provided by the LA

\*\*\* based on school's impact table with 1 September 2015 data

**Table four: 2016**

Possible effect in <b>2016</b> intake by area based on available information	Outside catchment area	Borehamwood and Elstree WD6	Bushey WD23	Shenley and Radlett WD7	Other WD and AL areas
a. First preferences expressed	44	100	26	38	12
b. Number of children allocated a place under 2016* criteria**	28	100 (PAN 180)	13 (PAN 180)	30 (PAN 180)	9 (PAN 180)

c. Allocated a place under 2016 criteria* on feeder school or nearest Jewish school***	2 (150) feeder school 8 (PAN 180) plus 6 nearest Jewish School	53 (PAN 150) 77 (PAN 180)	2 (PAN 150) 2 (PAN 180)	11 (PAN 150) 11 (PAN 180)	5 (PAN 150) 5 (PAN 180)
d. Would have been allocated a place under 2017 criteria on distance***	0	73 (PAN 150) 77 (PAN 180)	0 (PAN 150) 3 (PAN 180)	0 (PAN 150) 23 (PAN 180)	0 (PAN 150) 0 (PAN 180)
e. Difference between c and d (showing the possible impact of change)	Minus 2 (PAN 150) Minus 8 (PAN 180)	Plus 20 (PAN 150) 0 (PAN 180)	Minus 2 (PAN 150) Plus 1 (PAN 180)	Minus 11 (PAN 150) Plus 12 (PAN 180)	Minus 5 (PAN 150) Minus 5 (PAN 180)

\*2016 criteria means the criteria applied in 2014, 2015 and 2016

\*\* based on allocation of places with information provided by the LA as available 28 May 2016

\*\*\* based on school's impact table with 1 March 2016 data

36. In summary this data shows:

a. Preferences

- i. Around one third of all first preferences in 2014, 2015 and 2016 came from outside Hertfordshire.
- ii. The majority of first preferences made in 2014, 2015 and 2016 from inside Hertfordshire were from three postcode districts: WD6 (Borehamwood and Elstree), WD7 (Shenley and Radlett) and WD23 (Bushey).
- iii. The number of first preferences from outside these WD6, WD7 and WD23 postcode districts but within the new catchment area has been low: six in 2014, seven in 2015 and 12 in 2016.
- iv. The number of first preferences from areas of Hertfordshire not in the new catchment area, is very low: one in 2014, four in 2015 and two in 2016.

b. Places taken in September by Year 7

- i. The increase of the PAN to 180 for 2016 entries makes some direct comparisons difficult. In addition the figures for 2016 are liable to some change as they are based on

what was known on 28 May 2016.

- ii. Each year just under half of all places have been taken by siblings.
  - iii. From 2014 to 2016 the number of places allocated to children living outside Hertfordshire has reduced from 46 to 28 and a falling number were allocated a place based on the criterion of nearest Jewish school (18 to zero on a PAN of 150 or to eight on a PAN of 180).
  - iv. An increasing proportion of places has been taken by children living in Borehamwood or Elstree (WD6) from 2014 to 2016 (55 to 100 on a PAN of 180 in 2016).
  - v. A decreasing proportion of places has been taken by children living in WD23 (Bushey) and WD7 (Shenley and Radlett) with 51 (2014), 34 (2015) and 33 (2016 based on increased PAN of 180 with the school's impact table indicating 15 if the PAN had remained at 150).
  - vi. The number of places taken in 2014, 2015 and 2016 for those who live in the new catchment area but not in WD6, WD7 or WD23 has remained low at five, six and nine respectively.
- c. Comparison of 2016 and 2017 oversubscription criteria if applied to 2014, 2015 and 2016 intakes. Both sets of criteria include siblings. The 2016 criteria have feeder schools and nearest Jewish school and the 2017 criteria use proximity to the school within the catchment area.
- i. For those living outside Hertfordshire there would be a reducing number of places allocated on distance. The places taken would have reduced by 12 in 2014, 11 in 2015 and two (on a PAN of 150) in 2016. This reflects the reduction in those living outside Hertfordshire getting a place in those three years under the 2016 or 2017 criteria.
  - ii. The numbers for Borehamwood and Elstree (WD6) remain constant. This is because most children who lived there and wanted places were successful in 2014 and 2015. In 2016 if the PAN had been 150 there would have been 20 fewer children from WD6 being allocated a place than with a PAN of 180. This suggests that 20 children living close to the school would not have been allocated a place under the 2016 arrangements, which include feeder schools, on a PAN of 150.
  - iii. Under the 2017 arrangements the numbers for Bushey (WD23); and Shenley and Radlett (WD7) show increases

for 2014 (eight) and 2015 (14). 2016 shows a decrease of 13 on a PAN of 150 and an increase of 13 on a PAN of 180. As the PAN for 2017 is 150 then the PAN 150 is a better indicator for 2017.

- iv. Under the 2017 arrangements, five children who lived in the catchment area but not in WD6, WD7 and WD23, would have been allocated places in 2014 on the basis of distance but no children would have done so in 2015 or 2016.

37. The LA provided information on the forecast demand for secondary school places in the area. The forecasts take account of children aged under five years old registered with GP practices; primary school children moving on to secondary schools; trends, including migration to and from other authorities and the independent sector; and an assumed pupil yield from new or planned housing developments. The LA does not publish forecasts on an individual school level or for schools of a particular faith. I note that forecasts can only be indicative. The data provided indicates that for 2017:

- a. The Borehamwood area will have insufficient capacity in 2017 with a shortage of 15 places. The LA expressed confidence in meeting this need.
- b. The Bushey and Radlett area will have 59 surplus places in 2017.
- c. The St Albans area will have 115 surplus places in 2017.

Overall, for 2017, there are sufficient secondary school places in the area.

38. The objectors also brought to my attention information on the LA website on the percentage of children achieving a place at one of their preferred schools. This included the information that, "*Aldenham, which encompasses Radlett, was at 78.79%. This was the lowest success in Hertsmere of families receiving **any** of their preferential schools. Shenley was at 86.89%, Bushey at 91.95% and Elstree and Borehamwood was at 95.47%.*" The objectors said that people living outside Borehamwood and Elstree were less likely to be allocated a place at any of their preferred schools. The LA commented that "*Whilst satisfaction rates are lower in Radlett than the Hertfordshire average this is not currently directly attributable to local capacity but school preference.*" The LA explained that there are several very popular schools in the area which admit through selection and this affects how many families secure a place at one of their preferred schools.

39. The effects of demographics and parental choice make it difficult to forecast future trends accurately. Changing the oversubscription criteria will also affect how people make their preferences. The school's recent past has shown how demand can go up and can go down.

40. The likely demand for sibling places is easier to forecast. In the oversubscription criteria, following the first priority for children who are looked after or who have been previously looked after, priority is given to siblings of students at the school or previously at the school in both the current and 2017 arrangements. The proportion of places taken by siblings in each of the three years is around half at 74, 75 and 72 for 2013, 2014 and 2015 respectively. Children attending the feeder schools with older siblings at the school now, or who previously attended the school, are almost certain to be allocated a place whether or not the feeder criterion is removed. As the school gives a high level of priority to siblings, it is likely that around half of its Year 7 intake will continue to be siblings of children already at the school.

### **Consideration of case**

#### **The stated objective of the school is incompatible with its arrangements**

41. The consultation document says the objective of the school is to serve the Hertfordshire Jewish community and the school has repeatedly referred to its commitment to Hertfordshire. The objectors have interpreted this as a commitment to the whole of Hertfordshire which could be met by the school having arrangements designed to ensure places at the school for children from across Hertfordshire. They note that the school's previous arrangements, because of the use of feeder schools, led to the school having children who came from areas across Hertfordshire. The objectors say that it is not fair or clear to change this as the school is acting in contradiction to its stated position of being a school for Hertfordshire. As this is a theme that underpins many of the objectors' points I will consider this first.

42. The objectors refer to paragraphs 12, 14, 1.8 and 1.14 of the Code with regard to this matter. These are largely where there are mandatory requirements to be fair such as in paragraph 14, "*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*"

43. The school and the objectors refer to the school's funding agreement when considering the community the school serves. Matters within the funding agreement are outside my jurisdiction but I note that the section 1(6) of the Academies Act provides that "... *the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.*" This does not necessarily require the school to provide equally for the whole of Hertfordshire.

44. The funding agreement also says, "*Other conditions and requirements in respect of the Academy are that: the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community.*" The objectors interpret this to mean a much wider community than the area in which the school is located and put this in the context of the objects of the school in the funding agreement which include, "*to promote for the benefit of the inhabitants of Borehamwood and the surrounding area the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of*



*their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the condition of life of the said inhabitants.*” The objectors describe this as evidence that there is a distinction here which means that the school is meant to fulfil its educational purpose to a wider community than just that of Borehamwood where the school is situated. I note that there can be many definitions of what is meant by ‘community’. In this case the school has defined its community as the Jewish children of Hertfordshire.

45. The objectors say that there are Jewish children living in Hertfordshire who will not have an opportunity to attend the school because they do not live in the catchment area and, for those that do, most places will be taken by those who live very close to the school. The objectors therefore argue that the new arrangements mean that the school would not be a school for Hertfordshire but for a small area around the school and so not fulfil the school’s stated objective.

46. The objectors say that the school would continue to have children from further across Hertfordshire if it had retained priority for those attending feeder schools. Clore Shalom Primary School is around seven kilometres from the school and, in terms of admissions, for children who can demonstrate their Jewish practice, the key criterion is distance from the primary school. HJPS is around five kilometres from the school and the admission arrangements use percentage allocations to postcode districts so that there is a guarantee of some places across a wide geographical area. Some objectors say that by ending the feeder school priority the school has ended the scope for it being possible to have children from across Hertfordshire. The objectors have said that the arrangements now guarantee a place for those who live in Borehamwood at the expense of the rest of Hertfordshire.

47. The school has said, *“The very nature of admissions, particularly for a good school, means that inevitably it is impossible to please everyone. This is regrettable. In an ideal world the School would like to offer places to all those who apply. This is simply not possible.”* It has also said that, *“The School was set up to attract and prioritise pupils who live within Hertfordshire. It was never the intention to guarantee places for any individual Jewish community within Hertfordshire.”* There is no requirement in the Code that it should do so. I note that, under the 2016 arrangements, any child who attends a feeder school, including one who has moved out of Hertfordshire, would have had a high priority for a place at the school.

48. Paragraph 1.1 of the Code makes clear that it is for the admission authority to determine arrangements in accordance with the provisions of legislation and the Code. Paragraph 1.10 explains that it is for the admission authority to determine its oversubscription criteria in the light of local circumstances. The Code does not prohibit an admission authority from giving priority on the basis of proximity to the school and I have seen no evidence that persuades me that there is any legal requirement that the school must have arrangements that make sure that offers equal access to Jewish children from across Hertfordshire.

49. There has been much concern expressed by the objectors on the effect of the changes to the arrangements on individual Jewish communities; it is said that young families will move out of them in order to live close to the school and this will be to the detriment of those communities. The OCR in its response to the consultation said that it would not comment on the concerns of the objectors as, *“On the possible impact felt by other Hertfordshire communities, it would not be consistent to object to these proposed changes without also objecting to the arrangements of all other schools that include distance as a criterion, which is common. Similarly, it would also be necessary to object to anything that made one district more popular than another, such as a eruv, a mikveh, kosher restaurants, or a more popular Rabbi, which has a resulting impact on the Jewish populations of particular areas.”* I also cannot take into account such wider potential effects.

50. The objectors have expressed the view that house prices will rise near to the school. Again, the possible effect on house prices is not a consideration that I can take into account. There have been suggestions that only the very prosperous will be able to move to the Borehamwood area in future. Paragraph 1.8 of the Code says, *“Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.”* I have seen no evidence that this is not being met and I note that there has been no suggestion that the 2017 arrangements disadvantage unfairly any child from a particular social or racial group.

51. The LA has said that under the 2017 arrangements, *“most successful applicants without an existing connection to YC will live in Borehamwood and Elstree.”* The LA thus agrees it is a likely effect of the arrangements determined for 2017 that, once places have been allocated for siblings and other higher priorities, places will be allocated to children who live in Hertfordshire and close to the school. The school has emphasised its commitment to Hertfordshire in all its communications and the steps it has taken will fulfil that commitment. It is not possible for it to provide places for the whole of the Jewish population of Hertfordshire nor is it necessary for it to have arrangements that lead to it having children attend it from across Hertfordshire. The school complies with the Code in this respect and I do not uphold this part of the objection.

## **The consultation**

52. Paragraphs 1.42 to 1.45 of the Code provide the mandatory requirements with regard to consultation on admission arrangements. This says when consultation **must** take place and which bodies **must** be consulted. The school undertook a consultation because it was considering changes to its admission arrangements. The school informed all those required to be consulted by the Code and used a variety of means to raise awareness of the proposed changes.

53. There are different levels of detail and points of emphasis within the objections but they largely encompass the same areas of concern. The elements of the objections which relate to consultation are that:

- a. It was not clear to whom responses to consultation should be sent;
- b. the school gave a misleading impression when consulting on the introduction of a catchment area as it knew that only those living in the catchment and very close to the school were likely to be allocated a place but the proposed catchment area included large areas from which applications were unlikely to be successful unless the child was within another higher category;
- c. the school: did not listen to parents and Rabbis as it refused to meet and discuss the proposals with them; appeared dismissive of responses from parents; and appeared to have made up its mind before the consultation took place;
- d. inaccurate information may have been used to inform the decision of the governing body following consultation as the governing body did not appear to understand the implications of the proposals; the governing body may not have seen accurate evidence of impact of the changes; and the governing body may not have read all the responses to the consultation; and
- e. overall the consultation did not meet the requirements of a consultation as laid out in the London Oratory judgment and was thus flawed.

I will consider these aspects in the order above.

54. It was not clear to whom the consultation responses should be sent: the objectors say that the requirement of paragraph 1.45 of the Code that the admission authority **must**, “*publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent,*” was not met. This is because the consultation document made no reference to the website or to the name of any person to whom to respond with comments and “*only an unnamed email address was provided at paragraph 17.*” The objectors acknowledge that the name of the admissions officer was provided on the website. The letter that alerted people and organisations to the consultation said, “*Please refer to our website [www.yavnehcollege.org](http://www.yavnehcollege.org) for our consultation document, our proposed admission arrangements and details of how to respond with feedback on the proposals.*”

55. I believe that the school provided sufficient information to make it clear to whom responses should be sent and that the consultation met the requirements of the Code in this respect. I do not uphold this part of the objections.

56. The consultation was misleading: The objectors said that one reason the consultation document was misleading was that it did not explain that “*In the event of over-subscription in any of the above criteria 1- 4, proximity to the School of the child’s permanent home address as at the deadline for*

*application will be the determining factor.”* The objectors say that this gave the false impression that a child who lived in the catchment area would have an increased chance of being allocated a place at the school. The school says, *“Since there were no proposals to change the tie-break [that is the method used to differentiate between applicants in each oversubscription category], comment upon it was not sought – this was made clear. However, the proposed arrangements were included with the consultation and placed on the School’s website and the tie-break did, of course, appear in these.”*

57. The use of proximity to differentiate between children living in catchment with three points on the Yavneh College CRP would not be clear to those unfamiliar with the previous arrangements. However, the consultation letter sent out directed the reader to the school’s website to see the consultation document and the proposed arrangements, which did refer to the use of distance. I believe the school took sufficient steps to make those consulted aware that distance would be used to differentiate when the school’s PAN was reached in a particular oversubscription category. I consider below other aspects of the clarity of the consultation on the proposal to introduce a catchment area which used distance to differentiate between those living in the catchment area, and the implications of this.

58. The consultation document is also described by the objectors as misleading as it gave the impression that a Jewish child able to gain three points on the Yavneh College CRP who lived in the proposed catchment area and applied for the school would have a good or reasonable chance of achieving an offer of a place at the school. The objectors have said that they believe that some people supported the proposal to use a catchment and remove feeder schools because they were given the impression that it would enhance the chances of their children gaining places. The objectors have said that this is a false impression created by the consultation and thus the consultation was flawed. As one objector said, *“When I read the proposals initially, I did believe that we had preferred status because we live in the AL postcode (Bricket Wood). Now it is clear that only those living in Elstree and Borehamwood are likely to benefit, and we feel cheated as the so-called “preferred” status is clearly not genuine.”* Another said, *“I was asked to sign a petition in support of the rules and when I look at it, I can see signatories from people in Bushey who think they will get a place, or have a better chance. There is no way they have any chance at all. The fact they think they do is because the consultation is misleading.”* The objectors described other examples of this happening.

59. At the meeting, the school said that the responses to the consultation did not lead them to think that any of the respondents had a mistaken impression of the likelihood of their children gaining places at the school. The school said that it believed that there was support for the changes from parents whose children did not attend feeder primary schools because they thought that it enhanced the chances of their child of gaining a place but not unrealistically so. The objectors said that the school: *“allowed those parents to believe that their chances of admission had increased by the rule change when in fact, this was simply not the case. The critical point is that the respondees did not feel misled because they did not realise that they had been. Respondees living in Watford and St. Albans and others in AL*

*postcodes believed that the cutting of feeder schools would increase their chances of entry.”*

60. The LA said, *“the inclusion of such large postcode areas in Hertfordshire (encompassing all of Watford and St Albans) does raise an expectation from families living in these communities that their child/ren have a chance of gaining a place at Yavneh when, given the popularity of the school and the size of the Jewish community in Elstree and Borehamwood, that seems unlikely.”*

61. The objectors’ views are based on the data that was available to them as outlined above. This data was not part of the consultation information provided by the school. As noted, the data shows rising demand for the school that makes it increasingly unlikely that someone living outside the immediate vicinity of Borehamwood and Elstree will be offered a place at the school if he or she is not a sibling of a child at the school or in another higher category. The school confirmed at the meeting that the only children offered a place who lived in the AL postcode in the last few years gained the place under the feeder school or sibling criteria.

62. At current levels of demand, there is no realistic possibility under the determined 2017 arrangements that a child who lives in the AL postcode area would be offered a place at the school based on living in the catchment area. Similarly, there are likely to be only a few or no places available in 2017 to those living in the catchment but not in the Borehamwood and Elstree (WD6) district. Postcode areas cover different sizes and numbers of population. However, the data shows that of the 21 postcode districts, places offered on distance in 2017 will come from only WD6 or possibly WD6 together with a few from WD7 and WD23.

63. The objectors say that the admissions committee was already aware in 2015 that few or any children from outside the vicinity of Borehamwood and Elstree would be likely to secure a place in 2017 if the new arrangements were introduced. They quote an email sent by the chair to the other members of the admissions committee. The email was exploring potential ways forward on the subject of a catchment area. The email set the context, which was the possible removal of the ‘nearest Jewish school’ criterion, and the introduction of the WD postcode as a catchment area. In exploring these matters the email said, *“However, with the expansion of the local Borehamwood and Elstree population it is unclear how far into the other Hertfordshire areas we would actually get.”* The objectors describe this as clear evidence that the governing body, or at least the admission committee, knew that there would be few places allocated beyond a small part of the catchment area. It actually seems to me to show that the admissions committee was unsure at this stage how many applicants if any from outside Borehamwood and Elstree would secure places. However, the impact tables show that few children outside of the Borehamwood and Elstree WD6 postcode district were likely to be allocated a place at the school under the new arrangements and the school did have this information when it determined the arrangements. The consultation proposed the catchment area with a tie-breaker based on distance; in reality Jewish children living in most of the catchment area would not be allocated a place at the school on

that basis and this was misleading.

64. The objectors have expressed a concern, based on some of the matters recorded in the minutes of the meetings of the governing body, that not all governors understood the implications of the decisions that they were making when they were considering the responses to the consultation and the decisions to be made. For example, the minutes of the governing body meeting on 10 February 2016 says, "*The chance of gaining a secondary school place at Yavneh College would be increased for those children with a WD or AL postcode.*" Theoretically, this is true but the data shows that this was unlikely to have any reality for the majority of the catchment. Similarly the minutes record, "*It was noted that under the proposed new rules, more children from Bushey would have gained a place.*" This is accurate based on information that compares the current arrangements and the proposed 2017 arrangements against the 2015 intake. The objectors say that the admissions committee knew that this was accurate for 2015 but would not be for 2017 based on anticipated demand.

65. The school described at the meeting the various changes to demand for places at the school; they presented a picture of a dynamic situation in which there are few certainties and referred to recent history when the school was undersubscribed. The school has also said, "*The School was substantially oversubscribed up to 2009. However, with the opening of JCoSS in 2010, the School was undersubscribed for a number of years and had to implement a number of strategies including, for example, subsidising school transport to fill the School. Fortunately, the School now finds itself again heavily oversubscribed. However, as mentioned in previous submissions, there are a number of reasons why this may not always be so in the future.*"

66. Factors the school said it needed to take into consideration included the previous development of new schools, such as JCoSS, the increased desire amongst parents for their children to attend a local state school (previously it was more common for children to travel some distance to school and/or to attend fee-paying schools); and the possibility of other Jewish schools being opened. The increased likelihood that the school will have more demand from within its immediate WD6 area, has become clearer with the 2016 data which was not available to the school when it was planning its consultation. The school formulated the impact tables to assess the effect of the proposed changes and the school was aware of the increased demand for places in its local area. I am satisfied that the governing body had sufficient information at its disposal to understand the implications of the decisions it was making.

67. The objectors have criticised the school for not projecting forward and only looking back. They also say that it is only recently that the school has mentioned the possibility of new schools in the area; these were not factors used by the school to explain its rationale for change. However, the school did conscientiously take steps to try to assess the effect of the proposed changes. The impact tables inevitably showed that by removing the priority for the nearest Jewish school and introducing the catchment area based on Hertfordshire postcodes that more places would be available for Jewish

children living in Hertfordshire. As shown above, the number of children from outside Hertfordshire taking a place at the school has decreased anyway in recent years because of the increase in demand more locally.

68. The impact tables did not show any places in 2015 being allocated to the AL postcode area based on distance and did show that places were allocated to only three of the eleven WD postcode districts. This was the information the governing body considered when it was reviewing the responses to the consultation and the decisions that it planned to make with regard to the arrangements.

69. The chances of those living in the catchment area gaining a place at the school will be greater than the chances for those who live outside the area (unless the latter have priority under the higher categories of the oversubscription criteria). The objectors have argued that the consultation gave a false impression of how great that chance of gaining a place would be but have not provided me with evidence other than their own views that those consulted did gain a false impression of the chances of their child gaining a place at the school. That said, the school consulted on a catchment area in the knowledge that very few children were likely to get a place at the school, even if they lived in the catchment area, unless they also lived close to the school. On balance, I believe that this aspect of the consultation was misleading. This is because the school knew (or could reasonably have been expected to know) that children who met the school's test of religious practice and lived in most parts of the catchment area would not be likely to gain a place on the basis of living there. Given the current levels of demand, a child who met the religious practice test would need to fall within one of the higher oversubscription categories or live in the catchment area and very close to the school to secure a place.

70. The school did not provide the impact tables as part of their consultation. Versions of the impact tables were published in the Jewish Chronicle first through the objectors and then through the school after the close of the consultation. The school says that it released a simplified version of the impact table which played no part in its decision making. The objectors say that by the school not making this information available that it was not presenting the full picture and that this reduced the effectiveness of the consultation. I would expect a school to consider details in its considerations that are not made available to everyone during a consultation exercise. If it had provided the impact tables then there may have been a better understanding of the impact of the proposals. The decision not to do so does not, however, render the consultation insufficient.

71. The school did not listen: I have already referred to the '*over 600 responses*' to the consultation. Many of the objectors wished to meet the governing body or representatives of the governing body in order to be able to discuss the issues that worried them. The objectors made comparisons with JCoSS which was going through a similar consultation; the consultation made by JCoSS included a public meeting and I am told that JCoSS changed its approach as a result of its meeting which led to it phasing in changes over a period of time. The objectors tell me that they asked for meetings but these

requests were refused. This is described as evidence that the school was not genuinely consulting.

72. I have seen responses provided by Rabbis to the consultation. They raised concerns about the proposals and the school agreed to meet them. This meeting was cancelled by the school. This is seen by the objectors as further evidence of lack of true consultation. The school said that it cancelled the meeting following legal advice as, *“It was felt to be inappropriate to favour any one particular group. Moreover, the Rabbis’ response to the consultation was clear and no clarification was needed.”*

73. The school has said that it was, *“not required to hold a public meeting and did not believe that such a meeting would be constructive given the aggressive tone of some of the responses received including threats of litigation against governors personally.”* At the meeting, the objectors explained that they regretted that members of the governing body had felt that they were being approached aggressively and said that this stemmed from frustration at there being no opportunity for dialogue so parents and others did not feel heard. The Code does not require any meeting to be held during the consultation period. The lack of a public meeting or the refusal to meet those with whom a consultation is being held does not constitute a lack of compliance with the Code.

74. Some objectors felt that not responding to the Rabbis or meeting them meant that the school did not comply with paragraphs 1.38 and 1.44. Paragraph 1.38 says, *“Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based arrangements.”* Paragraph 1.44 of the Code requires that the admission authority, if it is a school designated with a religious character, **must** consult with the body or person representing the religion or religious determination. The body or person representing the religion in this instance is the OCR (and not local Rabbis) and it was appropriately consulted and did not express a view on the merits or otherwise of the changes being proposed. The school complied with the Code in this respect.

75. The feedback to the consultation that was provided to me by the objectors included many responses; the objectors estimate that there were over 250 responses copied into the mail box provided running to around 800 pages. The responses tended to include the same matters as each other and largely as reflected in the objections. Individual family members made responses so sometimes there was separate feedback from grandparents, fathers and mothers in the same family. In these responses alternative suggestions for change were made. For example, there were suggestions that a system of random selection could be used (this would have the effect of offering places from across Hertfordshire); and, most commonly, postponing changes so that children and people could prepare and adapt.

76. Many of the responses urged the school to consider that the effect of its proposed changes would be that children would only come from the vicinity of Borehamwood. There was much reference to how oversubscribed



the school was (based on preferences expressed rather than first preferences) and, linked to this, how the growing population of Borehamwood would mean that few if any children from outside the town would secure a place based on living in the catchment area.

77. There was considerable distress expressed at the proposal to change the arrangements for 2017 and confusion as to why this was necessary; particularly as the school had argued that its feeder school arrangements were fair when challenged by an objection recently and the adjudicator had not upheld the objection. Many of those who responded asked the school to wait, ideally until all those who had already joined the feeder schools had gone to secondary school.

78. There were suggestions that as the changes were stimulated by the opening of YPS, which would not have any child in Year 6 until 2022, that there was no need for haste. There was also suspicion expressed that the changes were part of a plan to make sure that there was a take-up of places at YPS and that this was not fair or ethical. There were also concerns that the proposed priority for a sibling from YPS would encourage parents to move their children to YPS in order to gain a place for a sibling at the school and again the view was expressed that this was not ethical.

79. Many of the responses referred to the “*legitimate expectation*” of a place at the school from those who had succeeded in gaining a place at a feeder school and the distress it was causing families that their child would not now be able to go to the school. This was felt to be particularly hard for those children who were in Year 5 and thus joining Year 6 in September 2016 and transferring to secondary school in 2017. There were references to the decisions made on the basis of that expectation; most significantly – from the perspective of the objectors - about houses bought or moved into on the understanding of the arrangements continuing. Many referred to the effect on house prices with the view that these would rise near to the school and how their family would not be able to afford to move there. Some therefore intimated that only the well-off would be able to move and gain a place at the school for their child. The potential negative effects on Jewish communities in Hertfordshire were raised as reasons not to make the changes as proposed.

80. The admissions committee considered the responses at its meeting on 14 January 2016. The school has told me that it also received many responses in favour of the proposals and said that overall the responses were, “*broadly speaking, evenly distributed between those in favour and those against.*” The minutes describe the number of the responses received and record, “*The Governors had a full and robust discussion on the pros and cons of whether the proposed changes for 2017 should be proposed for determination by the GB or whether they should be delayed for a year (or more). The discussion included whether there should be a tapering off of the feeder system like JCoSS and whether there should be a different tie break, such as a random allocation system, although it was noted that this could not happen as part of this consultation in any event.*” The minutes also record, “*It was agreed, but not voted on at this stage, that the proposed rule to give priority to siblings of children at Yavneh Primary School would not be*

*recommended for determination. As Yavneh Primary School was not going to be a feeder school, it was felt that this proposal in the consultation was not aligned with the Governors' wish for all children to have a level playing field when applying for Yavneh College.*" This is a change that meets some of the concerns raised by many of the responses provided by the objectors. It was also noted that at this point not all the members of the admissions committee had had the opportunity to read all the responses to the consultation. No decisions were made at this meeting.

81. A further meeting of the admissions committee was held on 5 February 2016 for which the minutes record, *"Account had been taken of the responses and their content fully considered."* In addition the minutes say, *"Following a very full and robust discussion, during which all of the numerous points raised in responses to the consultation were discussed, the Admissions Committee voted on the following proposals for entry into Yavneh College in September 2017."* The minutes then record recommendations to be made to the meeting of the full governing body on 10 February 2016.

82. The objectors say that not all members of the governing body may have read all the responses to the consultation and thus did not pay appropriate regard to the consultation. The school operates with an admissions committee as a sub-group to the governing body. Sub-groups are a common part of the working arrangements of a governing body and their role is to look in more detail at particular areas on behalf of the full governing body. It would not have been necessary for every governor to have read every response for the governing body to carry out its duty. The minutes show that the meeting of the full governing body on 10 February 2016 was dominated by the discussion on the responses to the consultation and the admission arrangements. There are four and a half pages of minutes and the points raised in the consultation responses that I have seen were covered. The minutes also say that *"The governors felt they needed to consider the very many children who are currently frozen out due to the priority for places from feeder schools."*

83. The objectors say that they felt that the school was dismissive of their views. Most of the evidence they cite for this view comes from articles in the Jewish Chronicle to which I will pay no regard.

84. The governing body determined its arrangements for 2017 having given consideration to the feedback that had been received. I am therefore assured that the school did properly consider the responses to the consultation when making their decision.

85. Inaccurate information: The objectors say that inaccurate information may have been used to inform the decision of the governing body so it may not have seen accurate evidence of impact of the changes. This is based upon the analysis of the impact tables which were discussed by the admissions committee on 5 February 2016 and the governing body at its meeting on 10 February 2016. The objectors say that the school considered the data for 2013, 2014 and 2015 but did not assess the impact in 2017 when the changes are to take effect. The objectors also note that some detail of the impact tables are open to question. These relate to very minor

corrections which were needed and to the significant differences between the numbers of places allocated each March and the actual take up of places each following September.

86. It is accepted by all parties that the Jewish population in parts of Hertfordshire is growing and that demand for places at the school has also grown. The data relating to the allocation of places in 2016 in the tables I compiled would not have been available to the governing body. However, the responses to the consultation provided to me highlighted the likelihood of this increasing local demand and its effect on those who did not live in Borehamwood and Elstree (WD6). The objectors do not believe that there was full understanding of this amongst the governing body as the minutes record, *"it was noted that under the proposed new rules, more children from Bushey would have gained a place."*

87. The impact tables for 2015 do show that seven more places would have been allocated to children living in Bushey under the new arrangements (leading to eight places rather than one). This statement in the minutes is therefore accurate based on 2015. The objectors also say that the admissions committee had been informed by its chair in November 2015 that the rising numbers in Borehamwood and Elstree made it unlikely that many children from outside Borehamwood and Elstree would get a place.

88. The school could have taken further steps to inform its decision. It is possible that some members of the governing body may have thought that the changes would lead to more children from further afield than WD6 gaining a place and I think that this is unlikely to be the case should demand remain at its current levels. I think that the data available to the school would support this view. Overall, however, I think that the school took sufficient steps to inform its decision making.

89. Not meeting the requirements of the London Oratory case: the London Oratory School asked for and was granted a judicial review of a determination made by the OSA about its arrangements. Part of the judgment concerned the consultation that the London Oratory School had undertaken. The judgment says, *"If consultation is embarked upon it must be carried out properly (per R v North & East Devon HA ex parte Coughlan [1999] EWCA 1871, per Lord Woolf MR at [108]): "To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken."* The objectors do not believe that this consultation fulfilled these requirements.

90. I have read the minutes of the discussions of the meetings held by the admissions committee and the governing body. The objectors quote from them and the consultation document to argue that the decisions had already been made and were 'set in stone' before the consultation occurred. The minutes of the admission committee meetings on 19 October 2015, 1 November 2015 (and a follow up email 3 November 2015) and 12 November 2015 provide detail of the discussions and the options under consideration.

As a result, on 12 November 2015 the committee agreed the proposals upon which consultation would take place, subject to the agreement of the governing body when it met on 17 November 2015. I note that the proposals of the admissions committee were still fluid at this point. Consultation needs to be undertaken before the body consulting has finally made up its mind. Generally, it may be that at the point of consultation the body has a fairly firm view about what would be best or that it has several options in play and no firm view about which would be best. In the case of consultation on school admissions, however, there are more specific requirements. Paragraph 1.42 of the Code refers to the requirement on admission authorities to consult on “*their admission arrangements*” and paragraph 1.45 states that the admission authority “***must publish a copy of their full proposed admission arrangements***. [underlining emphasis added].” Not only is it not possible to consult without some proposals on which comments can be made, but for school admissions there must be a definite set of proposed arrangements on which comments are sought.

91. The chair of the admissions committee sent an email on 16 November 2015 prior to the governing body meeting on 17 November 2015. The proposals at this point appear much more defined than recorded in the minutes for the meeting on 12 November 2015. They include the removal of the feeder schools and the forming of a catchment area from the WD and AL postcode areas. The minutes of the meeting of the governing body meeting of 17 November 2015 record some concerns about parents with children in Year 5 at the feeder schools who had assumed that their child would be highly likely to gain a place at the school. The governing body voted to go ahead with the proposed consultation. The impression given by reading the minutes of the meetings of the admissions committee and the governing body is that the school was considering all matters and had not made up its mind. I am satisfied that the consultation took place at a formative stage.

92. The objectors say that the consultation did not “*include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response.*” The consultation formally began 23 November 2015 as described above. The consultation paper said, “*The School is proposing to open a two form entry primary free school, called Yavneh Primary School, on the same site as the School in September 2016, starting with reception. Both Yavneh Primary School and the School will be governed by a Multiple Academy Trust. In light of this significant and material change, the Governing Body of the School has taken the opportunity to re-evaluate the School’s admission arrangements. The Governing Body proposes to amend the admission arrangements to ensure they are more closely aligned to the current circumstances in which the School operates. The School wishes to re-emphasise its commitment to the Hertfordshire community, following the commitment by the Governing Body of the School to open a new primary free school on the site of the School.*”

93. Many of the responses to the consultation argued that the opening of a new primary school, which would not have children ready to move to the school until 2023 at the earliest, was not sufficient reason to change the arrangements at this stage. They were certainly under the impression that the opening of the new primary school was the cause of the change and this

is understandable given the words in the consultation document. The consultation document did include a brief reasoning by each proposal. For example the reason given for the removal of the priority for those attending feeder schools was, "*This amendment will allow all applicants an equal opportunity to secure a place at the School, regardless of which primary school they attended.*"

94. The school has said that "*The motive for change is not up for consideration and nor are the relative merits of old and new admissions arrangements.*" My jurisdiction is to determine whether or not to uphold the objections and whether or not the determined arrangements including the oversubscription criteria conform with the requirements relating to admissions, including those of fairness and reasonableness. At the meeting the school was asked to explain its reasons for proposing new and different arrangements. The school said that the opening of the new primary school had been a factor as the Yavneh College Trust had to decide the admission arrangements for YPS and its potential role as a feeder school and this led to further review of all the arrangements.

95. The school was aware, not least because of the objection to the 2016 admission arrangements, that some parents thought the priority for children attending feeder schools was unfair. Such parents could feel that their children would lose out twice by not being able to attend one of the two Jewish primary schools in Hertfordshire and then having a lower priority for the school as a result.

96. In addition, there were concerns about the fact that Clore Shalom Primary School has a different Jewish ethos from that of the school. Linked to this, as JCoSS had reduced the number of places for its feeder schools, this had led to an increase in take-up of places for the school from Clore Shalom Primary School. In 2013, for example, 12 children came to the school from Clore Shalom and this rose to 22 in 2015.

97. A third reason given by the school was that the use of '*nearest Jewish school*' as a criterion was confusing; the LA concurred at the meeting that it had removed this type of criterion from the arrangements for schools for which it was the admission authority as parents had found it confusing. These reasons were not given in the consultation document. There is reference to the "*significant and material change*" created by the opening of YPS. In this context there is also reference to the wish of the governing body to ensure that its arrangements are "*more closely aligned to the current circumstances in which the School operates*". It is my view that the reasons the school gave in its consultation document for proposing changes to its arrangements did not clearly reflect the full picture. The focus on the opening of YPS was either misleading or became less relevant as time passed. The school had valid reasons for consulting but did not make all of these clear. This is not, however, of sufficient significance to render the consultation invalid.

98. The time allowed for the consultation was as required by the Code. I have already considered whether "*the product of consultation*" was taken "*conscientiously taken into account when the ultimate decision is taken,*" and

decided that it was. I note that one change to the arrangements was made following the consultation; the priority for siblings of those attending YPS was not agreed. I believe that the consultation undertaken by the school met the requirements of good practice set out in the London Oratory judgment.

99. However, I think that consultation was misleading as it could have led a reasonable parent of a Jewish child to believe that if they lived in the proposed catchment area then their child would have had a realistic chance of being allocated a place at the school and this is not the case. I have considered all the evidence presented to me and partially uphold the objections to the validity of the consultation held by the school. Partially upholding the objections to the consultation does not, of itself, render the determined arrangements invalid or mean that they do not conform with the Code.

### **Authority of governing body**

100. The objections include that the admission authority is the Yavneh College Trust and so therefore the governing body did not have the authority to consult on or determine the arrangements. Paragraph 11 of the Code is referred to which says that the admission authority for an academy is the academy trust.

101. The school has responded by saying, *“Whilst the admission authority is the Academy Trust, it [the trust] is operated by the Governing Body. The admission arrangements and any changes to them must be determined by the Governing Body of the School. Decisions are in effect delegated by the Academy Trust to the Governing Body. The terms ‘governors’, ‘trustees’ and ‘directors’ are all interchangeable.”*

102. The funding agreement for the school says, *“The Academy will be governed by a governing body (“the Governing Body”) who are the Directors of the company constituted under the Memorandum and Articles of the Academy Trust.”* The school’s governing body, the charity trustees and the directors of the company limited by guarantee all comprise the same people overseeing the same entity. The governing body is in effect the academy trust; it did have the authority to consult on and determine the arrangements. I do not uphold this part of the objections.

### **Catchment area**

103. The objectors say that the priority in the arrangements given to the catchment area as it is defined is:

- a. unclear because the existence of the catchment area gives the impression that if you live in it and achieve three points on the CRP that you have a reasonable chance of being allocated a place at the school when this is not the case;
- b. not reasonable because there are large areas within it from where children are highly unlikely to gain a place at the school; and

- c. not fair because it creates a misleading impression, as outlined above, and this has negative consequences for those living outside the immediate area of Borehamwood and Elstree (WD6).

104. I have considered below the means by which the school will differentiate between applications from those living in the catchment area because this is relevant to the clarity, reasonableness and fairness of the arrangements. The school has chosen to differentiate by proximity of the home to the school.

105. The catchment area is based upon two postcode areas, WD and AL. I asked the LA if it could help me by providing a map showing the catchment area. The LA kindly did this but emphasised that it must be for illustrative purposes only and added the following caveat, "*Postcode boundaries of all sorts (Unit, Sector, District and Area) are an artificial construct. They are not definitive boundaries. It is possible to create boundaries which enclose postcode unit centroids and meet defined parameters, i.e. the Postcode Area boundary for AL will enclose all postcode unit centroids that begin with AL. But there are complications. These are typically caused by 'vertical streets' (e.g. a block of flats which contains multiple postcodes such as AL). These are difficult to process and like commercial premises, PO Box addresses will typically distort the boundary in some way. There is also no guarantee that Areas will be contiguous (which often conflicts with popular expectation and leads to suspicion and confusion). Areas will also be somewhat fluid, new developments with new postcodes can cause boundaries to 'creep', so what is produced is likely to be different depending on at what point in time the postcodes and boundaries relate to.*"

106. Paragraph 1.14 of the Code says, "*Catchment areas **must** be designed so that they are reasonable and clearly defined.*" The use of postcodes for catchment areas is not prohibited by the Code. Despite the caveat of the LA it ought to be clear to a parent if they live within the catchment area or not as the postcode is part of their address. The catchment area is thus clearly defined and meets the requirements of the Code in this regard. The school has consulted on and determined arrangements which introduce a catchment area when one did not exist before. The Code does not prohibit this.

107. The objectors say that the catchment area is not reasonable. In my judgment a catchment area is likely to be reasonable if it is:

- a. logical (for example taking account of natural boundaries such as rivers);
- b. justifiable (for example the admission authority is able to provide rational reasons for why it is drawn as it is);
- c. clear (for example not cutting half way through a house so it is not clear whether the house is in or out of the catchment area);
- d. sensible in the local context (for example taking account of matters such as the provision made by other schools); and
- e. meaningful. A catchment area must mean something in terms of the chances of gaining a place at the school. It would not, for

example, be meaningful for a mainstream secondary school to have a catchment area that covered the whole of England.

108. None of this means that living in a school's catchment area confers a guarantee of being successful in an application for that school. There are sound reasons for the setting of catchment areas which mean that a school could not provide for all children living in catchment. Moreover, circumstances will change and the requirement for the admission authority to determine its arrangements every year and to consult every seven years gives a formal opportunity for an admission authority to consider whether the arrangements are still appropriate for its circumstances. In this case, the school was introducing a catchment area so it would be sensible for the catchment area to be appropriate in its existing situation.

109. The consultation document refers several times to the commitment of the school, from its inception, to the Hertfordshire community. The pertinent proposal was to end the priorities for a child attending a feeder school and for those for whom the school was their nearest Jewish school and use, *"a new oversubscription criterion 4, giving priority to children whose permanent place of residence is within the postcode prefixes of WD and AL. This amendment will ensure the objective of the Governing Body of the School to serve the Hertfordshire community is maintained by prioritising applicants living in the WD and AL postcode prefixes ahead of those applicants from the London Borough of Barnet, who might live geographically nearer the School due to the proximity of the School to the borders of the London Borough of Barnet."* This proposal was agreed by the school at the meeting of the governing body on 10 February 2016.

110. The proposal gave a reasoned explanation for why the school, as the only Jewish school in Hertfordshire, would decide on this catchment area; the use of the catchment area clearly gives a higher priority to Jewish children living in Hertfordshire above those living outside Hertfordshire. The defined catchment area therefore meets the criteria and definitions that I have described above with regard to being logical, justifiable and clear.

111. In the paragraphs above on data there is information by postcode on the number of preferences, first preferences and places allocated at the school. This clearly shows that most applications from those living in the catchment come from people living in three of the 21 postcode districts and most allocations of places are made to those three districts.

112. For example in 2014 there were only 11 preferences stated for the school for children living at an address with the postcode AL. In 2015 this figure was 12 and 2016 it was 16. The number of first preferences was even lower at five, five and eight respectively. I note that the number of preferences may change due to the introduction of the catchment area. I also note that more parents may put the school down as a preference, one of their limited number, because the defined catchment area in the 2017 arrangements had given them the impression that their child had a chance of being allocated a place at the school when this is not the case.



113. The nearest part of the AL postcode area is St Albans and that is around 15.5 kilometres from the school. Harpenden is to the north of the AL postcode area and is around 29.5 kilometres from the school. The furthest place allocated on distance at the school in 2014 was 4,560 metres (Radlett in WD7) on allocation day 1 March 2014 and 5,439 metres (Bushey WD23) on 1 September 2014. In 2015 the furthest place allocated on distance was 2,930 metres (Shenley WD7) on 1 March 2015 and 4,918 metres (Bushey WD23) on 1 September 2015. These distances are around one third of the distance to the nearest part of the postcode area of AL. These distances include those children allocated a place because they attended a feeder school or had a sibling attending the school. The removal of feeder schools will mean that there will be more places to be allocated on distance but the data indicates that this will lead to more places being allocated close to the school, not further away. I therefore anticipate that the effect of the 2017 arrangements will lead to fewer children from the AL postcode area being allocated places at the school.

114. It is not possible to make an accurate comparison with what will happen in 2017 because the change in the arrangements will affect who applies and who gets a place; those who previously would have got a high priority under the feeder school criterion for example will be considered under the distance criterion. However, it is clear that a Jewish child living much more than five kilometres from the school, even if in the catchment area, is unlikely to gain a place at the school and that this would have been known to the school when it defined its catchment area to include an area nearly 30 kilometres from the school.

115. The data for 2016, which would not have been available to the school in this form when it was considering its decision, shows that on 1 March 2016, based on a PAN of 150, that the furthest place offered on distance was 1,076 metres (Borehamwood and Elstree WD6) which is what the many of the responses to the consultation were alleging would happen. The pattern for 2014 and 2015 shows the distance extends from allocation day for the actual places taken in the September (around 1,000 metres in 2014 and around 2,000 metres in 2015). As the PAN for the school for 2016 was extended to 180 a direct comparison is not possible; the distance figure for 180 places as at July 2016 was 6,500 metres (Bushey WD23).

116. Places would have been taken by those who attend feeder schools and the reduction in numbers here will increase the numbers allocated on distance. In 2015, for example, the impact tables show that under the proposed arrangements that:

- a. there would have been no effect in WD6 (Borehamwood and Elstree) so it appears that any child who wanted a place who lived there would have secured a place;
- b. 11 places would have been available to those who lived in Hertfordshire which under the 2016 arrangements were allocated to children who did not live in Hertfordshire;
- c. three fewer places would have been available to those who lived in the catchment area but not the core three postcode districts of WD6, WD7 and WD23; and

- d. together this would have created an additional 14 places which would have been allocated to those living in WD23 and WD7.

117. The evidence is strong to show that there is little likelihood of a child living at more than five kilometres (and probably considerably less) from the school gaining a place at the school on the basis of proximity. There is therefore little or no chance of a child living in the larger part of the catchment area gaining a place at the school unless they are a sibling of a child already at the school or in another higher category. The objectors say that this is not fair to those who do not live close to the school as it does not provide places for Hertfordshire. This point was discussed above and I have determined that it is not necessary for the school to provide places for children from across Hertfordshire in order to comply with the Code's requirements as to fairness.

118. The school explained that it believes the postcode criterion is fair, clear and objective and that parents would understand it. The school said that catchment areas change from year to year by which I think it means that demand from catchment areas change from year to year as the school continued to say, "*In 2013, the School was undersubscribed. In 2014, under both the old and new rules, a child living in an AL postcode received/would have received a place.*" It was clarified at the meeting that 'a child' does refer to one child and that that this child gained the place with sibling or feeder school priority and not on proximity.

119. I asked the school to explain why it included AL in its catchment area. It explained that it wanted a way to prioritise Jewish children from Hertfordshire and felt more was needed than just the WD area. The problem is, however, that the combination of catchment and priority by home to school distance within catchment means that the school will only in reality be likely to offer places – on the basis of distance - to children living in a relatively small part of Hertfordshire.

120. There is also the question of whether there was any need to include the whole of the WD area in the catchment in the sense of whether there was likely to be demand from across the whole of the area. Setting aside WD6, WD7 and WD23, eight further WD postcode districts make up the WD part of the catchment area. In 2014 there were five preferences and one first preference for the school from these districts together; and in 2015 there were nine preferences and one first preference. One of these districts (WD3 Rickmansworth) is around 21.5 kilometres from the school and no child from there has indicated a preference for the school in the last three years. The fact is that whether the catchment area covered all of WD and AL or only those parts with the largest Jewish populations and past history of applications for places at the school, the data suggests that the school would not be able to cater for all those living in that catchment and who would like a place. The school did consider other forms of differentiating between applicants who lived in the catchment. It was known that there were likely to be more applications than places within the priority for those living in the catchment area and the school decided to retain distance as the means to establish priority.

121. The school tells me that it also considered including the EN area as

part of its catchment area. This discussion was not recorded in the minutes, but minutes of meetings are not required to be a verbatim record. The school decided against including the EN postcode area partly because “*JCoSS is located in EN4. It would have been inappropriate to prioritise the immediate area of another Jewish secondary school for the School’s catchment area;*” very few preferences were made from that area for the school; and also the “*EN postcode not only covers parts of southern Hertfordshire, but also areas in northern Greater London and western Essex.*” It is sensible of the school to consider the effect of other schools when determining its arrangements.

122. The minutes of the meeting of the governing body of the school on 10 February 2015 record, “*There was a discussion as to whether a random allocation system could be used. However, it was considered right that someone who lives sufficiently close to the school that they can walk to it should be prioritised over someone who lives further away and would need to travel... In any event, it was noted that as this had not been consulted on this would not be possible for 2017.*” There are good reasons for the school’s decision to give priority to those who live closest to the school. However, as noted above, there are consequences of this decision. It means that, in the context of the catchment area, that the arrangements give the impression that if a Jewish child lived in the catchment area then they had a chance of being allocated a place at the school. This is not the case for the most of the catchment area. A parent could therefore be misled, have unreasonable hopes and ‘waste’ a preference by putting the school down on the application form in the expectation of having a reasonable chance of being allocated a place. This is not fair.

123. I have considered whether the fact that this is the sole state funded Jewish school in Hertfordshire justifies the use of an extensive catchment area combined with the use of home to school distance to distinguish between those living within it. Preferences may change as a result of the new catchment area and I understand that a catchment area is an indicator of priority and not a guarantee of a place at a school. However, on the evidence that is available to me the catchment area does not appear meaningful in terms of the chance of being allocated a place at the school, including because of the use also of home to school distance to distinguish between those living in the catchment area. Paragraph 14 of the Code says 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.*” Parents will not be able to look at these arrangements and understand easily how places for that school will be allocated as it would appear that if they live in the catchment area then there is a possibility that they will be able to achieve a place at the school when this is not the case for the larger part of the catchment area defined for 2017. I therefore uphold the objections to the catchment area.

### **The arrangements do not comply with the Greenwich judgment**

124. The school said in its consultation document that its proposal to replace the ‘*nearest Jewish school*’ priority with a catchment area, “*will*

*ensure the objective of the Governing Body of the School to serve the Hertfordshire community is maintained by prioritising applicants living in the WD and AL postcode prefixes ahead of those applicants from the London Borough of Barnet, who might live geographically nearer the School due to the proximity of the School to the borders of the London Borough of Barnet.”*

125. The objectors believe that that the school’s use of the postcode WD, which closely follows the county boundary, and its frequently expressed intention to be a school for Hertfordshire and to prioritise the children from Hertfordshire expressly so that they get a place before children from Barnet, provides evidence that the Greenwich judgment has been breached.

126. The Greenwich judgment is referred in footnote 23 of the Code. The footnote relates to paragraph 1.14 of the Code which sets the requirements when catchment areas are used as part of the oversubscription criteria. Footnote 23 says, “*R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469 held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. Section 86(8) of the SSFA 1998 places an equal duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary.*” I understand the duty under section 86 of the 1998 Act to apply to all admission authorities, not just local authorities.

127. When the school consulted on its arrangements the LA’s response included concern that the school’s proposal may contravene the Greenwich judgment as, “*The Judgement states that pupils should not be discriminated against in relation to admission to a school simply because they reside outside the local authority area in which the school is situated. To prioritise children from postcode areas WD and AL (an area stretching across the county from Chorleywood to Welwyn including residences over 10 miles away from the College) before children living in Barnet, some of whom would live only 2/3 miles from the school, would appear to be a breach of the Greenwich Judgement.*” The LA strongly recommended that the governing body reconsidered this proposal.

128. The objectors have said, “*The point in Greenwich is that an admissions criterion cannot lawfully favour a child because they live in the local authority area in which the school is situated or disfavour a child because they live outside it. To adopt a criterion which has such favour or disfavour as its purpose is beyond the admissions authority’s statutory powers properly construed. Here, the school has adopted a criterion which favours children who live in two Hertfordshire postcode areas (WD and AL) **with the repeated express purpose of favouring children on the grounds of their residence in Hertfordshire as opposed to outside Hertfordshire** [emphasis in original]. Whilst the boundaries of WD and AL are not geographically co-incident with all of the boundary of Hertfordshire, the criterion is unlawful under the Greenwich principle, properly understood. Greenwich precludes criteria which favour children on the basis of their residence in Hertfordshire, whether or not the criterion treats the local authority boundary as a catchment area for a school.*”

129. The school has said that as the Greenwich judgment refers to local authorities it does not apply to other admission authorities, such as the school. The school also points out that parts of the catchment area are not in Hertfordshire and so therefore the school cannot contravene the Greenwich judgment. The objectors refer to the Rotherham judgment where the judgment included, *“One can envisage a situation where the school in question is located very close to the boundary, where the catchment area is drawn in such a way that it is entirely, save for some small and an insignificant extent, within the LEA boundary. If that were the position, it might give rise to a challenge to the catchment area itself or the policy. In effect, that was the Greenwich case.”* The objectors say that the situation described in the Rotherham judgment reflects the catchment area for Yavneh.

130. The objectors also point out, *“A cursory Wikipedia search of the term, “WD postcode” reveals that the only part of Buckinghamshire covered by that postcode is the village of Chenies (population: 246), whilst the only part of Greater London covered is “a small and mostly unpopulated protrusion of Harefield in the London Borough of Hillingdon.”*

131. Part of the context for this is the Jewish nature of the school. Much has been made by both objectors and the school of that fact that this is the only Jewish secondary school in Hertfordshire and that the Jewish population is rising. As noted above, there are three Jewish secondary schools to the south of the school in Barnet. I asked the school at the meeting if it had decided on a northerly catchment area because there were other Jewish schools to the south and so there was less need there; the school did not confirm that this was the reason but re-iterated its commitment to Hertfordshire.

132. The school has consistently emphasised its commitment to Hertfordshire and the minutes of the admissions committee from its meeting on 17 November 2015 described how the proposed changes *“will ensure the objective of the GB [governing body] to serve the Hertfordshire community is maintained by prioritising applicants living in the WD and AL postcode prefixes ahead of those applicants from the London Borough of Barnet, who might live geographically nearer to Yavneh College due to the proximity of the school to the borders of the London Borough of Barnet.”* Similar terminology was also used in the consultation document.

133. At the meeting the school described how the increased demand for places has made the school think more carefully about whom it wishes to prioritise. In previous years the school’s concerns around admissions had been about filling the school; now it is thinking about how to differentiate between Jewish children as it is oversubscribed.

134. The school is about two kilometres from Barnet. The WD postcode boundary closely follows the LA boundary with Barnet. The school has defined a catchment area for which the rationale is prioritising children from the local authority area of Hertfordshire over those in Barnet.

135. The school says that the arrangements do not prevent those from outside the catchment area from applying for the school and of course this is

true. It is also the case that the Code allows an admission authority to establish a catchment area which is “*reasonable and clearly defined.*” The principle underpinning the catchment area was that the school should serve its community which, all agree, has always been to serve the Jewish community of Hertfordshire. Section 86(8) of the 1998 Act and the Greenwich judgment however make clear that children cannot be given priority in the oversubscription criteria simply because they are from Hertfordshire.

136. The data indicates that for 2017 there are unlikely to be any places available on distance to a child from Barnet even if the criteria had not changed, and I have seen no objections or responses to the consultation that suggest that the Jewish people of Barnet, or its local authority, feel that they are unfairly disadvantaged by not being part of the catchment area for the school. However, these factors cannot render the catchment area lawful if its effect is to breach section 86(8) of the 1998 Act.

137. I therefore conclude that the catchment area is unlawful for this reason as well and uphold the objections.

### **Legitimate expectation**

138. Feedback to the consultation and information in the objections illustrated that many parents with children at the feeder schools had anticipated that their children had in effect already secured a place at the school when the time came to move to secondary school. There are two main ways that this is portrayed. One is the long term planning: moving to the area of a feeder school, for example, with the stated aim of guaranteeing both primary and secondary school Jewish education. This was described as happening sometimes even before the children were born. The other way is actions taken recently on the basis of assurances both perceived and given. Examples were provided of assurances heard. These include what was heard at events such as open mornings and evenings; events at the feeder schools with the headteacher of the school as an invited speaker; and a meeting of the chairs and vice chairs of governors of the feeder schools and the school. The school disputes that assurances were given at these times.

139. The objectors provided case law to support their objections on this matter. I do not need to consider the detail of case law on legitimate expectation or other public law doctrines, because these are generally narrower than the jurisdiction to determine whether the arrangements comply with the Code’s requirements of reasonableness and fairness. These requirements are paragraphs 14 and 1.8. Paragraph 14 says, “*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.*” Paragraph 1.8 of the Code says, “*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.*”

140. I recognise that families have made long term decisions planning on the basis of the arrangements in place at that time. However, an admission authority cannot be constrained in changing its arrangements because of

decisions made by families many years before. The Code is clear that an admission authority can, having followed due process, change its arrangements.

141. In terms of more recent decisions the objectors said that there has been insufficient warning of the changes and they had made decisions within the last year on the understanding that the current feeder school status was continuing; this included moving house or making renovations to an existing house rather than moving. These objectors say that they would have made other decisions if they had had any inkling of the changes introduced for 2017. One described the steps she took to assure herself that there were no changes planned to the feeder school arrangements prior to buying a house (her child was in Year 5 so will be going to secondary school in 2017). She attended an open evening at the school in the autumn of 2015 and *“there was not a single comment to indicate that the admissions criteria would in any way change for the 2017 intake.”* On 16 October 2015 she had confirmation from the school’s admission officer, who went away to check first, that no changes to the priority for feeder schools, were planned and finalised a house purchase on that understanding. The admissions committee had its first formal discussions on changing the arrangements on 19 October 2015 and the school’s consultation commenced on 23 November 2015.

142. The parent said that she believes that her child, who is attending a feeder school, will not be offered a place at the school because the house they bought is outside Borehamwood and they cannot now, having just moved, afford to move closer. The school has said in response to this that the school admissions officer *“does not have the authority to speak on behalf of the School.”* It would be entirely reasonable for any parent to think that the school admissions officer could speak on behalf of the school with regard to admission arrangements. That said, an admissions officer who says that no changes are planned is simply telling the truth if at that point no changes are planned; that cannot mean changes may not subsequently be made in accordance with the timescales set out in the legislation and in the Code.

143. There are several references by objectors to the previous determination made by the adjudicator on 2 September 2015. An objection had been made to the admission arrangements for 2016 as they contained feeder schools in the oversubscription criteria. The determination says that *“The school justified the selection of the two feeder primary schools on the grounds that the school was established for Jewish children in Hertfordshire and these are the two Jewish primary schools in the county.”*

144. The objection was not upheld. Some objectors said that it had been misleading for the school to argue that its arrangements were fair and reasonable and then to change them. I do not accept this argument. The school has the authority to change its arrangements from one set of compliant arrangements to another set of compliant arrangements. I understand that the previous determination may have encouraged parents to think that the feeder school priority would have continued. Again, however, a school is not prevented from changing its arrangements because they had been previously found to be compliant with the Code.

145. Other matters raised by the objectors include the emotions felt by their children who have been expecting for many years to 'graduate' to the school with their friends. I read many comments describing the effect of the sudden loss of an anticipated future on the children and their parents; words such as "devastating," "cruel," "heart-breaking" and, most commonly, "unfair" were used. One of the responses to the consultation explained that her son in Year 5, *"has been under the impression that in year 7 he will make the natural transition to Yavneh. This natural move was never explicitly spoken about by me nor my husband. The kids simply learn of this natural progression from within the school – whether this has been by the other staff or other fellow pupils."* The mother describes the close friendships which will be broken up and says that she cannot bear to tell him that what they thought was promised to happen, will not happen.

146. The case for having a legitimate expectation for a priority for children attending the feeder schools continuing is argued most strongly for the children currently in Year 5 and so the children for whom the 2017 arrangements apply. One of the responses to the consultation reflected many others when she said that she knew a place at the school was not guaranteed but, *"by making this change you have not given us enough time to consider other options or at any point suggested that the current rules will change. Our children are aware that Yavneh is where they go from HJPS – their expectations have been set. It is grossly unfair to change these rules without first having allowed time to change their expectations."*

147. There are various accounts from the objectors of instances where parents felt reassured at meetings that no changes were planned as described above. Some felt that they heard specific reassurances but these are hard to substantiate and the school denies that any assurances were given. The school does acknowledge that if asked in summer 2015 if any changes were planned they would have said that no changes were planned at that time. There are different memories of what was said at the meeting of chairmen and vice chairmen of governors of the school and the feeder schools but in summary the objectors felt assured that no change of this nature was envisaged so they planned accordingly. From the information made available to me it seems likely that the leaders of the feeder schools continued to act with confidence that the feeder school status was continuing for 2017 until shortly before the consultation commenced. Under the legislation and the Code it is always possible for an admission authority to propose changes to the admission arrangements until the latest date for statutory consultation to commence.

148. Another effect of the assumptions made by the objectors is described as parents and children not attending open days or sessions at other schools, held in September and October 2015, which meant they missed the opportunity to learn about alternatives and so feel ill-prepared for the decisions that they will have to make. The objectors have explained that the area has some selective schools; now parents have to consider other schools but find it is too late to attend open days before taking the necessary exams or for full exam tutoring and preparation for their children in Year 5 so they will be disadvantaged. For example the objectors told me that, *"for Bushey and Watford children, who are one of the most significant groups affected by this*



*change of rule, their alternative schools, Bushey Meads, Parmiters, Queens, Watford Grammar, Rickmansworth, St Clement Danes etc [the open days] occur in the winter term, typically October, AFTER the entrance exams (September 10). The application process began with registration in May 2016, and the children will be required to apply for and take various tests, including music aptitude, technology and sport depending on the school that they wish to go to. However, they will have no opportunity whatsoever to see those schools and decide which tests they might want to apply for until a month after the tests would have had to be taken. It is worth noting also that those tests are quite specific and require very specific guidance and tutoring, and even for the maths and verbal reasoning tests, children are commonly tutored as early as year 4.”*

149. Overall, the school’s response to these particular points is that it does not think that the schools referred to will be of particular interest to many of the parents concerned as they will wish to send their children to a Jewish school; and that if parents had wished to prepare their children for tests then they had had opportunity to do so from February 2016 when the school determined its arrangements. On the wider point the school says that the Code allows it to change its arrangements; that the open days in 2015 for the secondary schools referred to were for Year 6 children for entry in 2016; and that no assurances were given by the headteacher or others of the feeder school arrangements continuing beyond 2016.

150. The parents are raising two matters:

- a. the children will have to take tests for these local schools before they have had the opportunity to attend an open day or evening at the school and decide whether it is a school for which they would like to apply; and
- b. the children will not have had an equal opportunity to prepare for the tests required by these other local schools now that it appears a place may not be available at Yavneh College.

151. I have looked at the admission arrangements for the schools listed above and see children had to be registered by 17 June 2016 so that the tests are taken and the results known before applications are made by 31 October 2016 as laid down in paragraph 1.32c of the Code. It appears that there would not be an opportunity to attend an open day or evening in advance of the test if an open day was not attended in the autumn of 2015. These would have been held before the school announced its consultation. I understand that these may be intended for parents of Year 6 children but would anticipate that those thinking about applying for the schools in the following year, that is, parents of Year 5 children, would attend given the context of the timing of the tests.

152. The schools’ arrangements vary but they describe their tests broadly in two ways. One is that the schools act together in a consortium to test prospective students once for all the schools. A standardised test consisting of maths and verbal reasoning is used and applied in different ways. For example Bushey Mead’s School arrangements describes doing this to, “use

*the test results to ensure the all-ability nature of the school.*” Other schools use the tests to have a proportion of academic selection; for example, 49 of the 196 places at Watford Boys Grammar School are allocated by ability. Queen’s School in Bushey says that *“students of all abilities will be admitted”* and priority five of its oversubscription criteria says, *“up to 35% of places (92) will be available by ability, in strict order of merit, based on the results of the assessment test.”* It is the case that some parents do prepare their children – sometimes extensively – for the tests used for selection by ability but others do not and this is a matter for individual parents to decide.

153. The second type of test relates to the individual school’s specialism and they test for aptitude in that specialism. Paragraph 1.32a of the Code says, *“Admission authorities **must**: ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability.”* There should be no requirement to prepare for a test based on aptitude. I would not expect that any one child would apply to several schools with different specialisms on the basis of aptitude for each specialism on offer; this is unlikely in most circumstances.

154. I understand that parents and children would have preferred to have seen potential schools before children took any test. However, for the schools in the consortium one test is required for all of them so the choice of which school is applied for can still be made after the open days in September 2016. Parents may feel a need to try to prepare their children for these tests through private tutoring and thus may feel disadvantaged by the circumstances. I note that none of the consortium schools is fully selective by ability. Some are fully comprehensive. The arrangements of all of them also give some priority to those who live locally. I also note that these are not the only schools in the area. Bushey has three secondary schools, Watford five secondary schools, Rickmansworth four secondary schools and Borehamwood, including Yavneh College, has two secondary schools. Some of these may not be felt to be appropriate, two are Roman Catholic schools for example, but there is not a lack of places in the area; this has been confirmed by the data provided by the local authority as discussed above.

155. The objectors have indicated that if they feel that they need to apply for other schools because their children are less likely to gain places at Yavneh College, they would like to apply for partially selective schools. They indicate that they feel too that they will have inadequate time to prepare for this. It is the case that some parents do begin to prepare their children for selective tests several years in advance and that is, of course, their right. However, the fact that these parents did not do so and now have less time to prepare cannot render the timetable for change as laid down in the Code inappropriate.

156. Paragraph 15b of the Code says, *“Admission authorities **must** set (‘determine’) admission arrangements annually. Where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements.”* Paragraph 1.42 says, *“When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following*

school year. “ This clearly sets out the timetable and that the Code permits an admission authority to change its arrangements for the following school year.

157. Overall it is understandable that the objectors feel aggrieved; some have made life changing decisions based on the information provided to them and it would have been more helpful to give them more notice of intention. Many talk about how it is harder to have something taken away from them (the expectation of a place for those with a child at a feeder school) than not to be given something that you did not expect (a better chance of getting in on distance now that the feeder school priority is removed). The school has said, *“Whenever a school changes its admission rules, there will always be some who lose out and feel aggrieved. The aggrieved may claim that they have a legitimate expectation that the old rules should continue. This would, in effect, disenfranchise governors from performing their role and would prevent any school from ever changing its admission rules.”*

158. I have considered carefully whether the school acted reasonably in removing the feeder priority with so little notice for those in Year 5. I do feel for the situation of the children concerned. However, the starting point for considering fairness in this context is that the legislation and the Code provide that admission arrangements are only set for one year, and a timetable for consultation and changes to the arrangements is clearly laid down. The changes made by the school were in accordance with that timetable. There was no requirement to announce the proposed changes any earlier and I therefore do not uphold this part of the objection.

### **The changes were not needed yet**

159. The objectors describe how the opening of YPS, planned for September 2016, was the motivation for the changes to the arrangements. As the planned primary school was not definite at the time and, in any case would not have any students ready to start secondary school until 2023, the objectors feel that it was not fair to change the arrangements so far in advance. The view was expressed that a more paced approach was needed if any change were to be made. The objectors refer to paragraph 14 which requires arrangements to be fair.

160. In the consultation document the school clearly describes its initial motivation to review its admission arrangements as stemming from the proposed opening of a primary school, which is part of the multi academy trust with the school, from September 2016. There is evidence that at least one governor wondered whether parents knowing that the new school would be a feeder school for Yavneh College would encourage applications for YPS. It would be unreasonable to have any school named as a feeder school for 2017 when it had no children who could apply and the suggestion that it should do so plays no part in the consultation document. The consultation document did have the proposal that *“the definition of sibling be amended to include siblings of children attending Yavneh Primary School.”* This was seen by many of those who responded to the consultation as another way of getting children to attend the new primary school. This aspect was not part of the arrangements agreed by the school.

161. Many of the responses to the consultation, as reflected above, described the impact on their families of what they saw as such a sudden change. There was confusion expressed as to why any change was needed so quickly. This was based on the understanding that the primary school, presented as the catalyst for reviewing the arrangements, would only take reception aged children at the earliest in 2016 so there would be no children moving onto the school until 2023. There were requests for at least some notice of change with some suggesting that this should wait until all those currently in the feeder schools had moved on.

162. The records of the discussions of the admissions committee and the governing body show that the possible speed of change was considered from the beginning. The governing body made the final decision on 10 February 2016. The minutes of the meeting record discussion of the timing of the changes including *“whether the feeder schools could or should be phased out in stages. This was primarily as a result of vehement objections from parents of children in Year 5 at HJPS and CS [Clare Shalom]. Most governors felt that those families had been fortunate to get a place for their child at 5 years of age and it was not considered that at that age, parents are considering where their children will be going to school at 11. This point was disputed by one governor who commented that some parents had fought hard to gain a place for their child at HJPS in order that their education was mapped out in this way with a view to gaining a place at Yavneh College.”*

163. The minutes further record, *“Strong arguments were made against the phasing idea as this would move the problem to subsequent feeder year groups. The governors felt they needed to consider the very many children who are currently frozen out due to the priority for places from feeder schools.”* The governing body concluded that parents knew of the possibility of the change from November 2015 and that this was sufficient time for families to plan. I asked the school at the meeting what was the urgency for the change and was told that once discussions had begun it became clear this was the right thing to do and there seemed no merit in delay.

164. The tensions about securing a place at the school have become more apparent in recent years. I note again that in the quite recent past the school was undersubscribed and it is very recently that the intense pressure for places has become apparent. It is likely that parents who were not able to secure a place at one of the feeder schools would feel that the system was unfair; their children may have lost out twice by not getting a place at a Jewish primary school and those that did may also prevent them from gaining a place at the Jewish secondary school. The school told me, *“those who are in favour of the changes set up a Facebook page in November to show their support to the School. There are over 530 members of this Facebook group and more than 300 signatories to a related petition supporting the changes which was set up by a group of concerned parents last month specifically to draw the Adjudicator’s attention to the support for the revised admission arrangements. We are told that 20% of the supporters are from outside of Borehamwood.”*

165. The petition provided to me by the school, which records 309 signatures of support, makes the case for the changes determined by the

school happening on environmental, community and fairness grounds and says, *“These changes bring an end to the ‘golden ticket’ system which means that families lucky enough to get a place at their local Jewish Primary school get a free pass straight through to their chosen Secondary School. The new criteria enable families who “missed out” on their local primary school, (and have had to travel many miles to and from schools each day from the age of 4), to have an equal opportunity to get a place at Yavneh, regardless of primary school attended.”*

166. One comment said, *“We were penalised for a primary school. It is not fair to penalise us again for secondary school. The current feeder school parents got lucky for primary school, why do they deserve this luck again for secondary school? There needs to be an equal playing field for all local children. My kids have been commuting since they were 3 years old. Leaving at 7:30am returning just after 5pm. No time for play dates. Barely time for homework. They haven’t had the same luxury as the existing feeder school children. It is not fair to automatically give them this luxury again for secondary school.”*

167. The objectors said that there was no need to change the arrangements for 2017 because the motivation was the new school. The school felt that having looked at the issue that the situation was unfair and that it was right to move swiftly. The motivation for considering change is largely immaterial when considering the compliance of the arrangements with the Code. The school complied with the Code in its timescales for consultation and determination; therefore, in terms of the Code, it has been fair in this regard and I do not uphold this part of the objections.

### **Date for the revised arrangements**

168. Paragraph 3.6 of the Code describes how determined arrangements cannot be revised unless *“such revision is necessary to give effect to ... admissions law [or] a determination of the Adjudicator.”* This is the case here.

169. Paragraph 3.1 of the Code says that *“The admission authority **must**, where necessary, revise their admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by **28 February** following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator. An Adjudicator’s determination is binding and enforceable.”*

170. I have considered what would be fair and reasonable in these circumstances. The quantity and complexity of the objections has meant that we are now in the period when parents are applying for places for 2017. Some will have already made their applications on the basis of the determined arrangements. However, I do not think it would be reasonable or fair to have those applications for places decided on the basis of arrangements that are not lawful.

171. I have therefore decided that it is necessary that the arrangements be revised by the school by 31 October 2016 so that it is clear that all applications will be decided on the basis of revised arrangements that comply

with the Code.

## **Summary**

172. It is for the school to determine its arrangements subject to the Code. This is a school which wants to give priority to practising Jewish children in Hertfordshire. The test of what constitutes a practising Jewish child has been set in accordance with the guidance from the OCR. There are more children who satisfy this test than the school can accommodate.

173. The school has chosen to use a catchment area as one of its priorities within its oversubscription criteria. Where it is oversubscribed within that criterion it has chosen to differentiate between children on the basis of proximity to the school. The result is that children who do not live very close to the school will not get in unless they meet a higher category within the oversubscription criteria.

174. The school's stated objective is to serve the Hertfordshire community. The objectors said that it should therefore have arrangements that support children from across Hertfordshire getting a place at the school. There is no requirement on the school to do this and I see no conflict in its arrangements and its stated objective. I do not uphold this part of the objections.

175. The consultation complied with the Code in many respects; however, the proposal of the very extensive catchment area could have led parents to think that their child would have had an enhanced chance of a place at the school when for the majority of the area this was unlikely to have been the case. I therefore partially uphold the objections to the consultation.

176. The governing body did have the power to determine the arrangements for the school. I do not uphold the objections that it did not have the authority to do so.

177. The catchment area is clearly defined. Because of the use of home to school distance within catchment, the catchment area includes large areas where there is no chance of a Jewish child obtaining a place at the school unless they meet a higher priority and this makes the arrangements unclear to parents. I uphold the objections to the catchment area on the ground that it is not reasonable, because when used in conjunction with home to school distance it is not meaningful and not clear.

178. I uphold the objections to the catchment area on the grounds that it infringes the Greenwich judgment.

179. Parents with children in the feeder schools had an expectation that the previous arrangements would continue for 2017. The timetable for changes to arrangements is set by the Code and the school met this timetable. I do not uphold the objection that parents of a child attending a feeder school had a legitimate expectation to a place at the school in 2017 as the school complied with the Code in this regard and was not required as a matter of fairness to commence its consultation any earlier.

180. The school has the right to change its arrangements and it complied

with the Code in doing so. I do not uphold the objections that the change was not needed at this point and so was unreasonable and unfair.

### **Determination**

181. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for September 2017 determined by Yavneh College Trust for Yavneh College, Borehamwood, Hertfordshire.

182. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I specify a deadline of 31 October 2016.

Dated: 26 September 2016

Signed:

Schools Adjudicator: Mrs Deborah Pritchard