

DETERMINATION

Case reference: ADA/002136

Admission Authority: Islamia Primary School, Brent

Date of decision: 11 February 2011

Determination

In accordance with section 88I of the School Standards and Framework Act 1998, I have considered the admission arrangements of Islamia Primary School.

In addition to considering the referral, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998, and whether any changes should be made to them. Although I find that the admission arrangements do not conform to the requirements of the School Admissions Code I am not making any changes given the time in the admissions round.

I determine that for September 2011 the admission arrangements should be as determined by the Governing Body of Islamia Primary School.

The Referral

1. The admission arrangements (the arrangements) of Islamia Primary School (the School) for September 2011 have been brought to the attention of the Schools Adjudicator by a letter from the Local Government Ombudsman dated 15 November 2010.
2. The Ombudsman had recently issued a report (unpublished) on a complaint against the Governors of the School and had identified a number of faults concerning the way admission criteria had been applied. In his letter to the Schools Adjudicator he drew attention to the admission criteria themselves, in particular to the way in which applicants' religious commitment is assessed.

Jurisdiction

3. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the Governing Body which is the admission authority for the school.
4. Under section 88I(5), the Adjudicator has the power to consider admission arrangements which come to his attention by any means.

5. I am satisfied that I have the power to consider these arrangements and it is within my jurisdiction under section 88J(2)(a) and 88J(2)(b) to make any necessary changes.

Procedure

6. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code (the Code). In addition, I have considered the following:

the report of the Local Government Ombudsman into a complaint against the School (unpublished, dated 10 November 2010) and the covering letter of referral of 15 November 2010;

a copy of the School's determined admission arrangements for September 2011 (provided by the School); and

information concerning admissions to the School available from its website and from the LB Brent website.

7. I have also taken account of information received during a meeting I convened on 24 January 2011 at the School, and of the contents of a letter from the Governing Body to the Schools Adjudicator dated 7 February 2011.

Key Issues

8. In his report on the investigation into the complaint which had been made concerning the admission of a pupil to the School (for September 2009), the Ombudsman found fault concerning the lack of clarity and transparency about how the School's faith-based oversubscription criteria were to be satisfied by applicants. Although the School had reviewed its arrangements as a result of a previous complaint and investigation by the Ombudsman, and had introduced a new points system for assessing religious commitment, it was his view that some of the deficiencies noted earlier remained and that others had been introduced. The report referred to, and appended, the School's admission arrangements, including the form used to assess applicants' religious commitment, as these stood for September 2009. The covering letter of referral stated that the School was "in the process of amending the admission criteria, significantly reducing the number of questions used to assess adherence to the Muslim faith".

9. The report also found a potential conflict of interest in the School's processing of applications which resulted from one of the members of the Governors' admissions committee being the Imam to the School, who may under the arrangements also be asked to provide a reference for some applicants. Paragraph 1.74 of the Schools Admission Code requires an admission authority to avoid any such conflict of interest in admission arrangements. As a mandatory requirement it is one of the matters to which the Adjudicator must have regard.

Other Matters

10. I was able in the meeting which I convened on 24 January 2011 to discuss with the School and the local authority a number of further issues concerning the admission arrangements, some of which appeared to me to constitute breaches of the Code's requirements. These are described below.

Background and Consideration of Factors

11. Islamia Primary school is a very heavily oversubscribed Muslim Voluntary Aided school – the only such school in north London. It is currently accommodated in the buildings of a former Secondary School, but a new purpose-built Primary School is due to open in 2012. For admissions in September 2010 the admission number was set at 60 in anticipation of this development, which will eventually double the size of the school. However, given the present level of applications, places are likely to remain oversubscribed by a ratio of at least 3:1.

12. These circumstances mean that, under the School's admission arrangements, the score attained by applicants on the form which assesses level of religious commitment has been, and will remain, crucial in determining the outcome of that application.

13. Prior to the meeting on 24 January, I had obtained from the School's website a copy of the information which it provides concerning admissions to the School. The admission arrangements shown there were those for 2009/10. In addition to this failure to comply with the relevant Regulations concerning the publication of (up to date) determined admission arrangements, the website was deficient in a number of ways which I raised with the School at the meeting.

14. Although I had been sent a copy of the School's admission arrangements for 2011/12 in December 2010, a slightly revised version was tabled at the meeting. This was said to represent the School's latest thinking concerning its oversubscription criteria and the form used to assess commitment to Islam, and was therefore used as the basis of the discussion which followed. It is the version available through the LA's website.

15. I have considered all the comments made during the discussion of the School's arrangements, and as a result have the following concerns regarding the School's admission arrangements:

(i) the School's website

- does not provide a current version of the admission arrangements (Code, Appendix 4.3);
- states that the School does not maintain a waiting list, and that parents can only apply when there is a current vacancy, contrary to the requirements set out in the Code (paragraphs 3.19 – 3.26);

- refers to the School encouraging voluntary contributions from parents of a specified amount, which is inappropriate when associated with admission arrangements (Code, paragraphs 2.6, and 2.16c);

(ii) the third paragraph of the introductory statement to the document “Admissions Policy 2011/12” states that “All applicants are expected to give their committed, unreserved and positive support to the moral code, principles, character and aims of the school”. Paragraphs 2.31 and 2.32 of the Code provide guidance to admission authorities concerning the factual statements about a school’s ethos that may be included in its admission arrangements. It prohibits any requirement to give practical support to the ethos of the school (paragraph 2.16 c) as a means for giving priority to applicants. In view of the fact that the statement follows immediately in the arrangements after one which states that priority will be given to Muslim applicants, and that Islamic faith and practice permeates school life, this reads very much like a condition for application and is therefore not permitted;

(iii) an “admission number” is stated for year groups which are not those in which children are normally admitted to the School. This term is specific to such admissions (Code, paragraph 1.16) and therefore potentially misleading when used to describe the size of year groups defined by the Governors when considering applications for places in years other than Reception. Changes in circumstances may mean that the admission number which applied when the year group was first admitted may not be the figure used subsequently to decide when the year group is full (paragraph 1.24);

(iv) in view of the School’s confirmation that its intention is to give priority (after the admission of Muslim Looked After children) to Muslim children living within the defined catchment area, the second criterion in the list of oversubscription criteria should be headed accordingly rather than as “Applicants’ Religious commitment”, as currently. This will make clear the fact that applicants within this category are given preference over both Muslim applicants not living within the catchment and over non-Muslim applicants, wherever they live;

(v) for its supplementary information form the School uses a religious commitment form (RCF) completed by a parent or carer and a supplementary reference form (SRF) completed by an Imam or community leader. The Ombudsman found fault in the lack of clarity for applicants in being able to see how points obtained by them on the RCF were then used to determine priority for the allocation of places. The Code (paragraph 2.48) says that as with all oversubscription criteria, those that are faith-based must be clear, objective and fair. I agree that the wording of the second criterion is currently unclear in the way that it describes how priority within this category is allocated using this information. This should be rectified by a clear statement at this point in the admission arrangements to the effect that those with the highest score have the highest priority, those with the next highest score the next highest priority, and so on;

(vi) the arrangements also currently list within the second criterion seven areas covered by these forms. This list must clearly be consistent with the content of the forms, which I shall deal with below. However, in summary,

since paragraph 2.46 of the Code permits the use of faith-based criteria to be used to distinguish between applicants for places at designated faith schools on the grounds of membership or practice of the faith when it is oversubscribed, the credit which the forms award should be in relation to these same factors, and not to others. In other words, matters such as

- support for the school's moral code and principles
- involvement in Islamic communal life
- involvement in activities that support priority to Muslim community cohesion, and
- involvement in Islamic communal life

as currently listed, would not form part of the forms;

(vii) the School's intention to give the next priority to Muslim children who do not live in the catchment area is not adequately reflected in the description of the third priority category;

(viii) the Governors have confirmed that their intention is to give next priority to remaining applicants without reference to membership or practice of a faith, starting, as required (Code, paragraph 2.10) with Looked After Children. Any Muslim children who are Looked After will have obtained a place under the first oversubscription criterion, and any Muslim children who are not Looked After will have been considered for a place under the second or third categories, and so the fourth and fifth oversubscription criterion may safely refer to "all other" Looked After Children, and "all other " children respectively (which would have been inappropriate wording had the school continued its previous arrangements of reserving some places with the intention of admitting those not of the Muslim faith. In that case the groups being given priority over any remaining unsatisfied Muslim applicants would have had to be defined);

(ix) the preamble to the RCF currently asks applicants to consider adding additional information or reasons in support of answers given on the form, but gives no indication of how such information will be used to award points. Paragraph 2.13 of the Code requires that any points system used by admission authorities, in addition to avoiding complexity, must be transparent, easily understood, and objective. Questions can conform to these requirements by asking applicants to state which of the provided categories offered as a response to the question they belong to, and by stating how many points are awarded to each category, without further qualification. Categories should not be described using undefined terms such as "regularly" or "moderately", if the requirement of clarity is to be met. The preamble should provide an appropriate explanation of questions that conform to these requirements so that applicants are able to complete the form accurately, and to judge how their application will be awarded points;

(x) questions which are used on the current RCF and which do not conform to the requirements explained in (vi) above, which refer to financial contributions

(which could therefore unfairly disadvantage some children, Code paragraph 2.14) or which in some cases would lead to ambiguity as to the points to be awarded depending on whether a man or a woman completed the form, are

- a question about preparations made to attend Jummah (Friday) prayer;
- questions about the making of annual Zakah payments and Sadaaqa (charity giving);
- a question about attendance at a mosque or Islamic centre for daily prayers.

The Code (paragraphs 2.48, 2.50 and 2.52) requires admission authorities for faith schools to consult their religious authority about their arrangements, and to have regard to its guidance concerning the way in which membership or practice of the faith is established as part of them. Such guidance could help the School in framing any questions on a future version of the RCF which would give credit for religious observances such as fasting during Ramadhan or performing the Haj (pilgrimage) in a way which is objective but which does not discriminate unfairly against those having genuine reasons for being unable to engage in the relevant practice. In other words, if the person completing the form is exempt from a particular observance by virtue of their gender or the requirements of their employment, credit should be granted. This will be particularly important if the Governors should consider (as they have told me they intend) giving a weighting to these early questions dealing with adherence to the pillars of Islamic faith in order to ensure that the form overall is balanced in the credit given to faith on the one hand and to observance and attendance on the other.

I note that the School is already giving consideration to removing from the form some of the questions which concern attendance and observance. This may be helpful in improving the simplicity and clarity of the overall points system if these questions cannot both be framed in a way which accords with the requirements of the Code and which at the same time enables fair distinctions to be made between applicants for places.

(xi) the SRF is intended to enable the faith body to confirm the membership or practice of individual applicants in order that faith-based criteria may be applied, as required by the Code, paragraph 2.52. The School is already aware of the need for the SRF to be completed by persons not involved in the subsequent consideration of applications by the School in order to avoid the potential for conflicts of interest which was pointed to by the Ombudsman. However, the forms themselves do not currently make this a sufficiently clear requirement, and the current inclusion of an affirmation about the applicant's support for the ethos of the School repeats the problem which I have outlined in (ii) above;

(xii) the notes which accompany the RCF and SRF form part of the arrangements and must be in accord with the relevant requirements. As currently drafted

- the note which explains the relationship between the age of the child and the year-group into which they can be admitted does not take account of the requirement which is spelled out in paragraph 2.70 of the Code that admission authorities should give consideration to any request from parents that their child be admitted to a year-group other than the normal one for their age;
- the note that states that unsigned applications will not be considered does not state that countersignature is required only in the case of applications which rely on faith-based criteria (see above), and
- the note concerning late applications which states that these will not be considered does not accord with the need for there to be arrangements for considering such applications, which are published as part of the local authority's composite prospectus (Code, Appendix 4 paragraph 12).

16. Having considered the arrangements, I conclude that there are aspects which are unlawful and do not comply with the Code. I have therefore considered whether I should make any changes to the arrangements. In view of the timing of the referral by the Ombudsman leading to my consideration of the arrangements for September 2011 at an advanced point in the admission process for September 2011, I do not believe that it is appropriate for me to require there to be any changes to the School's admission arrangements for that date. However, I would expect the Governors, in the light of this determination, to give every possible consideration as to how unfair disadvantage which might arise from the continued application of the existing arrangements for admissions in September 2011 can be avoided or mitigated as they consider the applications. Furthermore, although the process of consulting on arrangements for admissions in September 2012 has already begun, I recommend that the Governors take into account the matters listed above when determining those arrangements, following the end of the consultation period.

Conclusion

17. For the reasons stated above, I conclude that the arrangements do not conform with the requirements of the Code in respect of the matters listed.

Determination

18. In accordance with section 88I of the School Standards and Framework Act 1998, I have considered the admission arrangements of Islamia Primary School.

19. In addition to considering the referral, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998, and whether any changes should

be made to them. Although I find that the admission arrangements do not conform to the requirements of the School Admissions Code I am not making any changes given the time in the admissions round.

20. I determine that for September 2011 the admission arrangements should be as determined by the Governing Body of Islamia Primary School.

Dated: 11 February 2011

Signed:

Schools Adjudicator: Dr Bryan Slater