



DETERMINATION

Case reference: ADA2765 and ADA2766

Objector: The Fair Admissions Campaign

Referrer: A member of the public

Admission Authority: The Academy Trust for Hasmonean High School, Barnet

Date of decision: 18 December 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for Hasmonean High School in Barnet.

I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements.

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 as quickly as possible.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the Fair Admissions Campaign (the objector), about the admission arrangements (the arrangements) for Hasmonean High School (the school), an academy school with a Jewish religious character in the London Borough of Barnet for pupils aged 11 – 18 for September 2015. The objection is to a number of aspects of the school's faith based oversubscription criteria; to some of the questions on the school's supplementary information form (SIF), to the expectation that parents will support the school's Orthodox Jewish practices and to the absence of a final tie-breaker. The arrangements have also been brought to the attention of the adjudicator by a member of the public (the referrer) in an email dated 2 July 2014. The referral concerns the request in the arrangements for a copy of the Jewish marriage certificate and the clarity of the school's Rabbi Reference Form (RRF).

Jurisdiction

2. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis, on 9 December 2013. The objector submitted the objection to these determined arrangements to the Office of the Schools Adjudicator (OSA) on 30 June 2014, the day on or before which an objection must be made. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. The referral was submitted to the OSA on 2 July 2014. Section 88I of the Act provides for the adjudicator to consider arrangements which are brought to her attention. I have decided to exercise my power under section 88I to consider the matters raised in the referral and the arrangements as a whole.

Procedure

3. In considering these matters I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a. the objector's email objection dated 30 June 2014 and subsequent correspondence;
- b. the referrer's email of 2 July 2014 and subsequent correspondence;
- c. the school's response to the objection and supporting documents and subsequent correspondence;
- d. the comments of the Jewish Secondary Schools Movement (JSSM) which is the school's religious authority on the objection;
- e. the composite prospectus published by Barnet Council which is the local authority (LA) for the area for parents seeking admission to schools in Barnet in September 2015;
- f. confirmation of when consultation on the arrangements last took place;
- g. copies of the minutes of the meeting at which the academy trust for the school determined the arrangements; and
- h. a copy of the determined arrangements, including the SIF and RRF.

5. I have also taken account of information received during and subsequent to a meeting I convened on 23 September 2014 at the school which was attended by representatives of the school, the school's solicitors, the LA, the objector and the religious authority.

The Objection and the referral

6. The objection raised a number of ways in which the objector considered that the arrangements did not conform with the Code. These are:

- a. *“active participation in an Orthodox synagogue”* which is necessary to gain priority under the school’s faith based oversubscription criteria is not defined and could breach paragraphs 1.9e, 1.9i, 1.8, 1.4 [sic] and 1.37 of the Code. As 1.4 is not concerned with faith based criteria, I have proceeded on the basis that what was meant was paragraph 14 which is;
- b. the arrangements at criteria 2-8 give priority to *“pupils from Orthodox Jewish Primary schools”* without naming the schools in contravention of paragraph 1.9b of the Code;
- c. the objector questioned whether criterion 4 in the arrangements giving an element of priority to eldest or only children was fair as required by paragraphs 1.8 and 14 of the Code;
- d. the arrangements lack an effective tie-breaker to separate two applicants living equidistant from the school in breach of paragraph 1.8 of the Code;
- e. the SIF and RRF ask for an applicant’s gender and details of both parents/carers which the objector considers contravenes paragraph 2.4 of the Code;
- f. the SIF says *“Governors... expect parents to give their full support to its [the school’s] distinctive Orthodox Jewish practices”* which the objector considers a breach of paragraph 1.9a of the Code;
- g. the SIF asks both parents/guardians to sign the form (not just one) in contravention of paragraph 2.4e of the Code;
- h. the RRF asks for details of all siblings and asks rabbis to *“Please initial here to confirm that you have seen a copy of the parents’ ketubah”* which the objector argues breaches paragraph 2.4a of the Code;
- i. the objector argues that the RRF asks questions such as ‘How long have you known this family?’ and ‘In what capacity do you know this family?’, that are not mentioned in the oversubscription criteria and hence breach paragraph 2.4 and 1.9a of the Code.

7. Since the initial objection, the objector has raised further concerns. On 3 September 2013, the objector raised concerns about whether a number of questions on the RRF breached paragraphs 2.4 and 1.9a of the Code, namely those which asked whether:

- a. the family adhered to the laws of Kashrus;
- b. the family had a genuine desire for Orthodox Jewish schooling;
- c. the family will be suitable for Hasmonean and support the school's ethos;
- d. the Rabbi had any further comments or information to help assess the suitability of the child for the school.

8. On 19 September 2014, the objector raised the concern that as there was no written guidance from the religious authority, the school could not take account of religious activities without breaching paragraph 1.9i of the Code. These points were made a number of months after the deadline for the submission of objections which for admissions in 2015 was 30 June 2014. I have decided to consider them using my power to do so under 88I of the Act as set out below.

9. The referral argued that the school sought a copy of the parents' Jewish marriage certificate in order to determine whether the parents were married which would breach paragraph 1.9f of the Code which prohibits taking account of marital status and/or whether the child was halachically Jewish which would contravene the Equality Act 2010 (the Equality Act) and that the RRF was not clear which would breach paragraphs 14 and 1.8 of the Code. The referral was also concerned that the school included among its feeder primary schools a number of fee-paying independent schools which would breach paragraph 1.9l of the Code. Finally the referrer noted that no indication was given as to which synagogues would be approved by the JSSM.

Other Matters

10. When I reviewed the arrangements I considered that they contained provisions that appeared not to conform with the requirements relating to admissions as follows:

- a. the provision in the arrangements that for a synagogue to be recognised as Orthodox for the purposes of the arrangements was a matter for the rabbis of the JSSM could be subjective in breach of paragraphs 14 and 1.8 of the Code and could also mean that parents would not be able to tell if their own practice would satisfy the school's faith based oversubscription criteria in breach of paragraph 1.37;
- b. the provision in the arrangements that: "*In the event of any dispute as to whether a child meets these criteria [the observance and practice of Orthodox Jewish traditions and practices], the authority of the Rabbis of the Jewish Secondary Schools Movement is final*" could be subjective in breach of paragraphs 14 and 1.8 and could also mean that parents would not be able to tell if their own practice would satisfy the school's faith based oversubscription criteria in breach of paragraph 1.37;

- c. in order to gain priority under the school's faith based oversubscription criteria, a child's parents had to have "*a genuine desire for Orthodox schooling*" but there no clear and objective way of ascertaining this was set out which made the arrangements not objective and unclear in breach of paragraphs 14 and 1.8 of the Code;
- d. the definition of looked after and previously looked after children in relation to Y7 was not accurate in accordance with paragraph 1.7 of the Code and the arrangements did not give the priority for looked after and previously looked after children required by paragraph 1.37 of the Code;
- e. the arrangements provided for different measures of home to school distance for girls and boys which did not conform with the requirement in paragraph 1.7 of the Code that "*Oversubscription criteria **must then be applied to all other [non looked after and previously looked after] applicants in the order set out in the arrangements***";
- f. the number and size of primary schools included as feeder primary schools might not have been made on reasonable and transparent grounds as required by paragraph 1.15 of the Code;
- g. the school gives priority to siblings of former pupils but there appeared to be no definition of "former pupils" as required by paragraph 1.11 of the Code; and
- h. the arrangements for admission to Y12 were not clear as required by paragraphs 14 and 1.8 of the Code. They did not appear to conform with the requirements of paragraph 2.6 of the Code in relation to the setting of academic entry requirements and did not provide for students to apply for a place on their own behalf as required by paragraph 2.6 of the Code. The arrangements also appeared to breach the Act and paragraph 1.9 d of the Code.

Background

11. The school is a mixed Orthodox Jewish secondary school. It became an academy in 2011 converting from voluntary aided status. The school has two sites – one for boys and one for girls - which are just over one mile apart. The school has a published admission number of 150 for Year 7 (Y7). It is oversubscribed for Y7 each year and so has to apply its oversubscription criteria. Figures provided by the LA confirm that in each of the past three years the school has received more than 150 first preference applications. The oversubscription criteria can be summarised as follows:

1. Looked after and previously looked after Orthodox Jewish children.
2. Orthodox Jewish pupils from Orthodox Jewish primary schools

with medical or social grounds for admission to the school.

3. Orthodox Jewish pupils from Orthodox Jewish primary schools with siblings at the school.
 4. Orthodox Jewish pupils from Orthodox Jewish primary schools who are only or eldest children (due to the difficulty in the school's community for only or eldest children to receive a place at a Jewish school).
 5. Orthodox Jewish pupils from Orthodox Jewish primary schools whose siblings are former pupils of the school.
 6. All other Orthodox Jewish pupils from Orthodox Jewish primary schools.
 7. All other Orthodox Jewish pupils who do not attend an Orthodox Jewish primary school.
 8. All other pupils from Orthodox Jewish primary schools who do not meet the criteria of being Orthodox Jewish but have a genuine desire for Orthodox Jewish schooling.
 9. Looked after children other than those who are Orthodox Jews.
 10. Other children.
12. The arrangements define children of the Orthodox Jewish Faith in the following way:

“A A child must observe and practise Orthodox Jewish traditions and practices as set out in B2 hereunder. In the event of any dispute as to whether a child meets these criteria, the authority of the Rabbis of the Jewish Secondary Schools Movement is final.

B A child must also have a parent or parents who:

- 1. Have a genuine desire for Orthodox Jewish schooling*

And

- 2. Observe the Sabbath and Holy Days, adhere to the Dietary Laws and maintain active participation in an Orthodox synagogue, such synagogue to be one recognised as such by the Rabbis of the Jewish Secondary Schools Movement.*

Confirmation of the above will be required from the Rabbi of the synagogue which the parents attend or from an Orthodox Rabbi who is well acquainted with and knows the family”.

13. The arrangements include a SIF and RRF which together request information about the family's religious commitment and practice. The arrangements also provide that where the school reaches and exceeds its

PAN under any of the criteria, priority will be given to those who live nearest to the school. For girls, the arrangements provide that school in this context means the girls' site and for boys, the boys' site.

14. The school admits a very small number of pupils each year from outside the school into Year 12 (Y12), the sixth form. The arrangements when I first saw them explained that the school intended to offer not less than two places to candidates not already studying at the school. The arrangements said that priority would be given to those who met both the school's tests of Jewish practice and commitment and the academic entry requirements set. The arrangements explained that where more candidates met these entry requirements than the school had places available, priority would be given on the basis of:

"1. Students for whom places on appropriate course are available.

2 In order of GCSE point scores."

Consideration of Factors and Other Matters

15. At the meeting, the school was quick to acknowledge that in a number of ways its arrangements did not comply with the requirements relating to admissions. It undertook to make some changes immediately and has since the meeting published revised arrangements, including a revised SIF and revised RRF. I have referred below to these changes and the new arrangements and forms where it is appropriate to do so. In addition, the school has confirmed that where applications for places had been made before the arrangements and forms had been changed, these applications will be treated as if made on the basis of the new arrangements and forms.

16. In relation to some other aspects of its arrangements, in particular those related to the way in which these define children who are to be prioritised for admission on the basis of Orthodox Jewish practice, the school also recognised that changes need to be made to secure compliance with the requirements relating to admissions. However, the school believes that these changes need significant consideration and could only reasonably be made for admissions in 2016, given that the admission round for 2015 is now underway. The school gives two reasons for this.

17. First, as became clear during my consideration of the case, while the school's faith body is closely involved with the school, there is no current, written guidance from the school's faith body. Paragraph 1.39 of the Code says that schools with a religious character "**must have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith based oversubscription criteria, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code**". Paragraph 1.9i says that schools with a religious character "**may take account of religious activities, as laid out the body or person representing the religion or religious denomination.**" The Code does not say that guidance must be written. However, if guidance is not written it is challenging to say the least to make any informed judgement as to whether a school has had regard to it or to test whether the guidance meets the

requirements of the Code or whether any activities that have been taken into account by the school have been laid out by the religious authority. The letter from the school's solicitors after the meeting says that "*further and conclusive guidance on practice requirements [from the JSSM] is now required before new religious oversubscription criteria can be drafted*". Thus the school and the faith body agree that new guidance from the JSSM is needed before the school can determine new arrangements for deciding the oversubscription criteria against which applicants can be given priority for admission on the basis of faith.

18. Second, the school argues that its "*new criteria will be of such fundamental importance to the School's community and potential future applicants.... public consultation should take place*" before the school determines new arrangements. The school accordingly proposes to introduce new arrangements for admissions from 2016. The Code provides at paragraph 3.1 that where changes to admission arrangements must be made following a determination by the adjudicator, these changes must be made "**as quickly as possible but no later than 15 April following the decision.**" Within the framework of the law and Code it is accordingly for the school to decide what changes to its arrangements to make now and what to make next year

The school's faith based oversubscription criteria

19. I consider first the school's faith based oversubscription criteria together with the relevant questions in its SIF and its RRF. Some of these issues were raised by the objector and by the referrer and some were identified by me when I reviewed the arrangements. I should make clear that I consider both the SIF and the RRF to be part of the admission arrangements as provided for in footnote 4 to the Code which states that admission arrangements includes any "*supplementary information to be used in deciding on the allocation of places and refers to any device or means used to determine whether a school place is to be offered*" and that both fall within the scope of paragraphs 2.4 and 2.5 of the Code which deal with the use of supplementary forms.

20. The meaning of maintain active participation: In order to qualify for priority under the school's faith based oversubscription criteria, the arrangements say that a child must have a parent or parents who "*maintain active participation in an Orthodox synagogue*". The objector raised a number of concerns based on the fact that active participation was not defined. First, the objector argued that the arrangements were not clear as required by paragraphs 14 and 1.8 of the Code. Second, with no definition of active participation, different rabbis might apply different standards which could mean that two families with the same levels of participation might be treated differently and this would not be fair and would amount to a breach of paragraph 14 of the Code. Third, the objector considered that the arrangements did not meet the requirement of paragraph 1.37 of the Code that admission authorities "**must ensure that parents can easily understand how any faith based criteria will be reasonably satisfied.**" Fourth, the objector was also concerned that because active participation was not defined, some rabbis might take account in considering the active participation test of activities not permitted by the Code either because they breached paragraph

1.9e which prohibits taking account of practical or financial support to a school or associated organisation or paragraph 1.9i because they took account of parents' or children's hobbies or activities other than religious activities laid out the religious authority.

21. The school had said in correspondence before the meeting that it was not possible to give a "*precise definition*" of active participation but that this would in all cases involve regular synagogue attendance. The school said that any attempt be more specific about what might constitute active participation would risk discrimination against those "*who for good reason may not be able to participate as fully as others*". The school maintains that "*Participation .. is not simply a matter of quantitative attending, but can include religious study and volunteering. It is not more than a specifically measurable aspect of the requirement to comply with the Shulchan Aruch [the Code of Jewish law]*" and "*...parents will already possess enough clarity regarding what "active" participation means because of the well established forms of practice set down in Shulchan Aruch which will be familiar to them.*" The school explained in correspondence prior to the meeting that it felt that it was important that the Rabbi completing the RRF should have discretion to reach a decision about whether a family was actively participating or not taking account of their circumstances. I note that currently, not only is there no "*precise definition*", there are no examples of what would or would not constitute active participation. The school may wish to take account of the circumstances of different families. However, this does not mean that it can have admission arrangements that do not comply with the requirements relating to admissions. The arrangements as determined are not clear and not objective and there is a very real risk that they would be interpreted in different ways by different Rabbis. Nor did the arrangements make clear that activities which breached paragraph 1.9e of the Code because they amounted to practical or financial support to an organisation associated with the school could not be taken into account.

22. The school had explained in its response to the objection that "*active participation*" could include religious study and volunteering as well as synagogue attendance. The objector argued that this meant that the arrangements might breach paragraph 1.9i of the Code on two grounds. Paragraph 1.9i prohibits taking account of children's or parents' activities other than religious activities which have been laid out by the religious authority. The objector argued that as there was no current guidance from the JSSM, there were no activities laid out which could be taken into account. The school – and religious authority – had made clear that they considered that active participation could include voluntary activities and religious study as well as worship. The objector considered that such activities should not be considered to be religious activities within the ambit of paragraph 1.9i. On the first of these arguments, the school and religious authority have accepted the need for new guidance. I consider that without any written guidance against which activities can be tested, the school's arrangements cannot be in conformity with paragraph 1.9i of the Code. On the second of the arguments, I consider it is for the religious authority to say what are and what are not religious activities and for the adjudicator to determine whether these conform with the Code. Whether voluntary activities and religious study conform with the Code will depend upon what the activities actually comprise in any given case. In

this case, there are no definitions of activities and no written guidance. The school has in an email from its lawyers dated 17 November 2014 has given some examples of volunteering, namely: volunteering to read from the Torah, to lead services or to run children's services within the synagogue.

23. In response to this, the referrer has pointed out that the first two of these activities are limited in most Orthodox synagogues to men and thus could discriminate unfairly against single parent families with only a mother.

24. In any case, the arrangements determined for 2015 - which are those I am concerned with - do not make clear what is meant by active participation. The objection was that active participation was not defined. I uphold this aspect of the objection on the grounds set out above.

25. The school has accepted that changes are needed to the oversubscription criteria, SIF and RRF. Following a constructive discussion at the meeting, the school has said in correspondence from its solicitors *"it is likely that significant changes will be made to the definition of Orthodox Jewish in the arrangements. This is likely to include a reduced set of specific elements of Jewish religious law and clarification will also be provided to rabbis when completing the Rabbi form on the quantity of factual evidence of applicants' practice of those specified elements that must be demonstrated."*

26. When I reviewed the arrangements, I also noted that in relation to *"active participation in an Orthodox synagogue"* the arrangements also provided for *"such synagogue to be one recognised as such by the Rabbis of the Jewish Secondary Schools Movement."* I was concerned as to whether the question of recognition by the JSSM was objective and clear as required by paragraphs 14 and 1.8 of the Code and whether it met the test in 1.37 of the Code which is outlined above. Parents may know that to qualify a synagogue must be recognised by the Rabbis of the JSSM but they have no way of knowing from the arrangements whether their synagogue is so recognised.

27. The school had said in its initial response to my questions that synagogue includes *"small, regular gatherings for prayer which are not necessarily constituted as formal organisations but which are, nevertheless, synagogues for these purposes... a list is therefore impractical"*. I can see that some synagogues may not be constituted as formal organisations. The school also made the point that new communities with their own new synagogues might be established and it would not to rule out the opportunities for families which attended such synagogues to gain places at the school. However, I am not convinced that it follows from this that the arrangements cannot explain what conditions would have to be met for a synagogue to be considered by the JSSM to be an Orthodox synagogue. I note in this context that the school's RRF itself asks for an *"official synagogue/communal institution stamp"* which certainly suggests a degree of formality. As the arrangements stand, I consider that it is not possible for a parent or carer to know whether the synagogue they attend would be considered by the JSSM to be Orthodox or not. I consider that this means that the arrangements do not meet test in 1.37.

28. The arrangements provide for an assessment by the JSSM as to whether a synagogue is or is not Orthodox with no guidance or indication given as to how such an assessment will be made. I consider that this means that the arrangements are neither clear nor objective and hence do not conform with paragraphs 14 or 1.8 of the Code. The school has since the meeting provided a list of synagogues which it would recognise as Orthodox noting that others might also be recognised. Such a list would I consider be most helpful to parents as a way for them to gauge whether the synagogue they attend would meet the school's requirements. However, this list is not included in the revised arrangements provided to me. The arrangements do not conform to the Code.

29. The arrangements provide that where there is any dispute as to whether a child is eligible for priority on the basis of the school's faith based oversubscription criteria, the matter will be settled by the Rabbis of the JSSM. They will of course have the information that has been provided on the SIF and RRF and, indeed, the RRF explains in a section addressed to the rabbi that it is seeking "*help in assessing the suitability of the above mentioned applicant for a place at our school*". The referrer also drew the form to my attention stating that it was not clear from the form "*what exactly is required by the school – so it's not very transparent*".

30. On the version of the RRF I first saw there is a list of nine questions about the family and their religious practice. However, there is no indication in the arrangements as to how the Rabbis of the JSSM will use the information provided on the SIF and RRF in order to determine whether a child is eligible for priority for a place at the school under its faith based oversubscription criteria. There is no indication as to whether some of the questions are more important than others. For example, one question asks about observance of the Sabbath and holy days and another about the dietary laws. Another asks whether the Rabbi "*feels that this family will be suitable for Hasmonian and will support the ethos of the school*". There is nothing to indicate whether a child will only be considered to meet the school's practice and commitment test if all the questions are answered positively or if it would be, for example, sufficient if a particular number received a positive response. It is not possible for a parent to look at these questions and understand what is necessary to satisfy the school's faith based criteria. Some of the questions are open questions whereas others are capable of "Yes" or "No" or other specific answers. A number of the questions ask for the Rabbi's views, for example, on whether he feels the family have a genuine desire for Orthodox schooling. These are not capable of objective answers; they are by definition the Rabbi's opinion. One of the questions asks whether the Rabbi feels the "*family is suitable for Hasmonian*". Oversubscription criteria are concerned with the relative priority a child is to have for a place when a school is oversubscribed and not with whether a child or family is or is not "suitable" for the school.

31. One of the questions asked of a rabbi on the RRF is for him to initial to confirm that he has seen a copy of the parents' ketubah (which is the Jewish marriage certificate). The referrer was concerned that the school might be seeking to establish whether children were halachically Jewish by virtue of matrilineal descent and that this would breach the provisions in the Equality Act 2010 in relation to discrimination on the grounds of race. The objector

queried whether this information was necessary in order to apply the oversubscription criteria and therefore whether it was permitted by paragraph 2.4 of the Code. In addition, I was concerned that such a question would give information about marital status. Paragraph 1.9f of the Code prohibits giving priority to children on the basis of the marital status of parents and paragraph 2.4 prohibits asking on any supplementary form for personal details about families, including marital status. The school said at the meeting that they were not seeking to establish whether a child was halachically Jewish and they did not seek to establish the marital status of parents. They said that they would remove the question from the RRF. I uphold this aspect of the objection as at the time the objection was made the RRF included the question about the ketubah which was not necessary to apply the oversubscription criteria.

32. The school has since the meeting varied its arrangements and made significant changes to the RRF. The new RRF has only five rather than nine questions. The questions about the Ketubah and about the family's suitability for the school, desire for Orthodox Jewish schooling and likelihood of supporting the school's ethos have been removed. The open question which invited the Rabbi to provide any other comments or information has also been removed.

33. The objector argued that two of the other questions on RRF (how long have you known the applicant and in what capacity) did not relate to the school's oversubscription criteria and hence were prohibited by paragraph 2.4 of the Code which provides that supplementary forms can be used only to request additional information needed to apply the school's oversubscription criteria and paragraph 1.9a which prohibits the use of conditions (other than those in oversubscription criteria). At the meeting, the school explained that these questions were asked only to establish that the Rabbi had sufficient knowledge of the family to provide authoritative answers to the other questions. The school and the religious authority maintained that this was important as they wanted families to have the option to ask the Rabbi of their synagogue or another Rabbi who knew the family well to be able to complete the form. It is quite common and quite acceptable for SIFs to ask that a person completing the form certify that he or she has known a family for a minimum amount of time and to set out the capacity in which they know the family. Ascertaining that a person has the authority and knowledge to provide information about a family is information which falls within the scope of "*information when it has a direct bearing on decisions about oversubscription criteria.*" I do not uphold this aspect of the objection as the arrangements do not in this regard breach the paragraphs of the Code referred to.

34. However, the arrangements as determined did not make clear the purposes for which this information is sought and the basis on which it is sought. It is not clear that, for example, additional priority would not be given where a Rabbi had known a family for, say, six years rather than two or knew them on the basis of their involvement in particular activities. The school at the meeting accepted that the form needed to be clearer. I uphold this aspect of the objection and I also determine that the arrangements do not conform with the Code as the SIF is not clear in relation to these questions. The varied form makes clear that it must be completed by a Rabbi that has known the family

for at least a year and that if this is not possible then more than one Rabbi must complete a form. I consider that the form is still not clear as it does not explain the purposes for the questions and does not make clear that there is no greater priority given if a family has known the Rabbi for more than a year or in any particular capacity (such as being a family friend or neighbour rather than the Rabbi of the synagogue attended). The arrangements do not in this respect conform with paragraphs 14 and 18 of the Code as they are not clear and the school must revise the arrangements as soon as possible.

35. The objector's paper of 3 September 2014 raised some further aspects of the arrangements which the objector considers breach paragraphs 2.4 and 1.9a of the Code. These are the questions on the RRF about the family's adherence to the laws of Kashrus (Jewish dietary laws) and the family's desire for Orthodox schooling; the child's suitability for the school and whether the family will be suitable for the school. The questions about the desire for Orthodox schooling and suitability for the school have been removed from the RRF. So far as the question relating to the dietary laws is concerned, I consider that this question corresponds to the definition of Orthodox Jew given in the arrangements. It is reasonable for the school to ask for this. However, as I have already determined, the arrangements are not clear as required by paragraphs 14 and 1.8 they do not set out precisely how answers to the questions will be treated, for example, by saying whether it is necessary for the rabbi to give a positive response to all or only some of the questions in order for a child to be considered to meet the test of being an Orthodox Jewish children.

36. Requirement to complete SIF: When I reviewed the school's website in July it stated that in order to apply for a place at the school, the SIF and RRF as well as the CAF must be completed. Paragraph 2.4 of the Code is clear that supplementary forms can be used to obtain information necessary to apply oversubscription criteria. However, paragraphs 15d, 1.36 and 2.8 are clear that where a school – including a school with a religious character such as Hasmonian - has places available they must be offered without condition or the use of oversubscription criteria. Schools cannot require the completion of a SIF as a condition of admission. There would be no need for anyone applying to the school under its criteria 9 or 10 to complete the SIF as all the information needed would be on the LA's common application form (CAF). At the meeting, the school accepted this. The school's website now makes clear in relation to Y7 that the SIF and RRF need only be completed by applicants seeking priority under the school's faith based oversubscription criteria.

37. Requirement for both parents/guardians to sign the SIF: The objector stated that the SIF required the signatures of both parents in contravention of paragraph 2.4 e of the Code which provides that supplementary forms must not ask both parents to sign the form. The original SIF asked for "*details of all persons who have legal responsibility for this student*" and provided two spaces for signatures headed "*Signature of Parent/Guardian 1*" and "*Signature of Parent/Guardian 2*". By asking for details and signatures of more than one parent or guardian in this way the arrangements breached paragraph 2.4e of the Code and I uphold this aspect of the objection. At the meeting, the school accepted that its arrangements did not conform with the Code and undertook to vary them. The revised SIF now says "*Please give*

details of the person or persons who have legal responsibility for this student. Please note that only one person with legal responsibility is required to complete this form". The revised SIF continues to provide for contact details of two parents/guardians and for both parents/guardians to sign the form. It does not say that only one parental/guardian signature is required. The school had said at the meeting that it wished to retain the opportunity (but not requirement) for both parents to sign the SIF. This was on the grounds that a number of parents did not speak English as their first language so it was helpful to have contact details for both in order to be able to check information about siblings; sometimes mother and father had different surnames and it was necessary therefore for the Rabbi to have details of both, and in order to understand – in the case of separated parents – the wishes of both parents for their child's education.

38. I have taken full account of the arguments put forward by the school. The issue of understanding parents' wishes is not germane to the application of lawful, objective oversubscription criteria; an application is made and the role of the admission authority is to consider that application against its oversubscription criteria. It is not their role to assess what the wishes of the parents may or may not be. The school is far from alone in having parents who do not speak English as their first language. I cannot see that making a form more complicated and asking for unnecessary information can make it easier for such families to submit a complete and accurate application; it is, in fact, likely to make it harder. The form as it stands will also be likely to reveal information, the seeking of which is specifically prohibited by the Code, such as the marital status of parents (strong indicators of which may be whether they cohabit and whether they have the same surnames). In addition, I am concerned that a single parent who can only provide one signature may consider – rightly or not – that they have less chance of securing a place for their child at the school.

39. The Code explicitly states at paragraph 2.4 that additional information may only be sought when it has a direct bearing on decisions about oversubscription. The school's arrangements as determined breach that requirement and in addition were unclear and unfair. I uphold this aspect of the objection. The varied arrangements continue not to conform with the Code and the school must revise the arrangements as quickly as possible.

40. Parents expected to give full support to the ethos of the school: The objector argued that the statement on the SIF that: "*Governors...will expect parents to give their full support to its [the school's] distinctive Orthodox Jewish practices*" breached paragraph 1.9a of the Code as it appears to place a condition on the consideration of applications. The school said in its initial response that this was not intended to be seen as a condition and that parents were not required to endorse their acceptance of it. As well as the provisions of the Code, sections 110 and 111 of the Act are also relevant. They provide that admission authorities must not invite a parent to sign a parental declaration of a home school agreement before the child has been admitted to a school, make the signing of a parental declaration a condition of the child's admission or base a decision about admitting a child on assumptions about whether the parent would or would not be likely to sign a parental declaration. I consider that a parent reading the school's form might

consider that their application would be considered less favourably if they indicated that they would not give their full support to the school's distinctive Orthodox Jewish practices. The revised SIF has a different form of words. It says "*Governors ... hope that parents will give their full support to its distinctive Orthodox Jewish practices.*" I uphold this aspect of the objection as the arrangements when determined did not comply with the requirements relating to admissions.

Other aspects of the admission arrangements

41. I turn now to elements of the admission arrangements which are not concerned with faith.

42. Request for information about gender of pupil on the SIF: The objector stated that the SIF and RRF asked for details of the gender of applicants and that this was contrary to paragraph 2.4 of Code as this information would be provided on the CAF and the SIF can only ask for additional information necessary to apply the oversubscription criteria. In fact, the RRF does not ask for the pupil's gender, although the SIF does. In its initial response the school's lawyers accepted that there was no need to ask about the gender of applicants on the SIF, although later correspondence said that this was required for planning purposes. As the CAF will provide the gender of applicants, this cannot be requested on the SIF and I uphold this aspect of the objection in relation to the SIF. I note that the revised SIF continues to ask for this information. The letter of 6 October 2014 from the school's lawyers said that the school needed to know the gender of applicants as they operate two different sites. In the first place, this is one school with one PAN. The fact that the school chooses to operate with two single sex sites is a matter for its internal organisation and not relevant to its admission arrangements. The gender of a child can have no bearing on the allocation of places.

43. The objector queried the request for details of all siblings. The objector argued that for the purposes of giving priority to those with siblings at the school, the school only need if there was one sibling at the school and that for the purpose of giving priority to eldest/only children all that was needed was to ask if any older siblings had attended the school. In fact, the school also gives priority to siblings of former pupils, so would need information about this also. Subsequent to the objection, the objector also asked why it was necessary for the RRF to ask similar questions to the SIF about siblings.

44. Both the SIF and RRF ask for details of all siblings. The SIF asks for details of siblings who are current pupils and siblings who are former pupils and whether the applicant is an only or eldest child. The RRF - in a section that is to be completed by a parent before the form is handed to the Rabbi - then asks for details of all siblings, their current and previous schools. As set out above, the school gives (different degrees of) priority to siblings of current and former pupils and to only/eldest children. The LA's common application form (CAF) will also include some information about siblings, but will not necessarily provide all of the information the school needs. For example, it would not be possible to tell from the CAF if a child had an older sibling who had attended the school some years ago but had since left or whether a child was the only or oldest child in the family. It is accordingly reasonable for the

school to ask if there is at least one sibling in the school and for details, if a sibling has been a former pupil and for details and if a child is an only/eldest child.

45. However, there is no reason for the school to ask for details of all siblings. Where the criterion is, for example, satisfied by there being one older child at the school, then there is no need to ask for details of all older children at the school. In addition, the forms clearly refer to all siblings. This will include any younger siblings in lower years at primary school or who have not yet started school. Such information cannot be relevant to the oversubscription criteria of the school and paragraph 2.4 of the Code means that it cannot be sought. I uphold this aspect of the objection.

46. I turn now to the question of question of why the school asks for overlapping and similar information in different formats on different forms. The school explained that each year it received applications where families had failed to include details of some or all siblings and this had been picked up by the Rabbi. The school argues that this is important so that it can properly apply its oversubscription criteria. I have accepted that, in the case of this school, there will be some sibling details which need to be included on the SIF as they will not feature on the CAF. There is no reason why the section of the SIF which provides details of siblings where these are needed should not be seen by the Rabbi. This would allow the Rabbi to point out if necessary to the parent that the form had not been properly completed. However, that does not justify including a request for including two very similar questions on the two forms. Indeed, it could make the arrangements harder for parents – and, indeed, Rabbis, to understand. I determine that the arrangements in this respect are not clear as required by paragraph 14 and 1.8 and do not conform with the Code. The school is required to amend its arrangements as quickly as possible.

47. The RRF states that it should be given to the Rabbi to complete. The form when I first saw it provided also, however, that where an applicant already had a sibling in the school, the form could be returned direct to the school. I asked the school at the meeting why this was. I note that the varied form does not include this statement but rather it provides that the form should in all cases be given to the Rabbi to complete.

48. Definition of siblings of former pupils: The school gives an element of priority to siblings of former pupils. The Code provides at paragraph 1.11 for such priority and states that where it is given, an admission authority “**must set out a clear and simple definition of such former pupils and how their siblings will be treated.**” The school’s determined arrangements state that for siblings, they use the LA’s definition. However, the LA’s definition does not cover former siblings. The school’s arrangements accordingly lack the required definition. The school agreed at the meeting to address this. The varied arrangements do not contain a definition of former siblings and do not therefore conform with the Code. The Code requires the school to revise its arrangements as quickly as possible.

49. Priority for eldest/only children: As indicated above, the arrangements give an element of priority – after those with siblings at the school but before

those whose siblings are former pupils - to children who are the oldest or only child in a family. The objector queried whether this was fair. I begin by noting that this specific issue is not addressed in the Code. At paragraph 1.10, the Code says that it does not offer a definitive list of oversubscription criteria and that it is for admission authorities to decide what criteria would be most suitable for the school according to local circumstances. At the meeting, the objector said that he had not seen any other case in which this priority was used and he thought it would be unfair to children who were not the eldest.

50. The school explained that – as the arrangements themselves state – it could be difficult for oldest or only children to gain a place at the school or another Jewish school as a high proportion of places each year were taken by siblings of existing pupils. Figures provided by the school subsequent to the meeting show that on average over the past three years 57 places have been left each year after allocation of places to siblings of current pupils, looked after and previously looked after children and children with statements. The school explained that each year not every child who met the school’s religious practice test and fell to be considered under the eldest or only child criterion had been able to secure a place on the first allocation round.

51. At the meeting, it was noted that most admission arrangements did not distinguish between eldest/only children and other children who were not siblings. The LA said that it had queried the school’s approach some ten years previously and accepted that that it was a reasonable response to local circumstances where there were significant numbers of large families. The LA’s only concern was that the current arrangements might disadvantage the younger siblings of an eldest child who had a statement of special educational need (SEN) or Education, Health and Care Plan (EHCP) naming another school. The school at the meeting and in subsequent correspondence has said that it will consult on a change to its arrangements so that a child with an older sibling or older siblings with statements of SEN or EHCP naming other schools were considered in the same way as eldest/only children.

52. I have considered this issue carefully. As the Code does not address this particular point, I have considered this aspect of the objection against the core requirements of the Code that arrangements must be clear, fair and objective. This provision is objective and it is clear. It is – as the objector – notes, uncommon but that does not mean that it is necessarily unfair. Without the provision, the eldest/only children who currently benefit from it would come below those who are siblings of former pupils as the school has chosen to include this priority within its arrangements. By giving priority to siblings of current and former pupils – as is permitted by the Code – the arrangements make it easier for those who have an existing connection with the school to gain a place for their younger children. The school then seeks to balance this with the priority afforded to eldest or only children. I have considered whether there any categories of children who might be disadvantaged by the school’s approach. The LA has identified one such group – any child who has one older sibling who has been placed in a special school. Children with older siblings whose parents have chosen to send them to a school other than Hasmonean or who could not gain a place at Hasmonean will also have a lower priority than those with siblings, former

siblings or eldest/only children. If the school did not have the eldest/only child criterion, then such children would be considered alongside children with older siblings at other schools, with priority given to those who lived nearer to the school. The school cannot accommodate all those who qualify for priority under its faith based criteria and would like a place there. The school's arrangements must distinguish between them and some will be disappointed. I do not uphold this aspect of the objection.

53. Feeder Primary Schools The arrangements give considerable priority to children who have attended an Orthodox Jewish primary school. As outlined above, oversubscription categories 2 – 6 inclusive and 8 include attendance at an Orthodox Jewish Primary School. Paragraph 1.9b of the Code states that admission authorities must not take into account any previous school attended unless it is a named feeder school. Paragraph 1.9l provides that independent fee-paying schools must not be named as feeder schools and paragraph 1.15 allows schools to give priority on the basis of attendance at a feeder school provided the selection of feeder schools is transparent and made on reasonable grounds.

54. The arrangements did not name the feeder primary schools in breach of paragraph 1.9b. The referrer had suggested in correspondence that the school had not named its feeder schools as it had included fee-paying independent schools among its feeder schools. The naming of fee-paying independent schools is prohibited by paragraph 1.9l of the Code. Information provided by the school has confirmed that in each of 2013 and 2014, it admitted 27 pupils to Y7 from fee-paying independent schools and gave each of these children priority on the basis of the schools they had attended in breach of the Code.

55. The varied arrangements name 19 feeder schools. They are all publicly funded schools. The combined PAN of the school is over 800 which is more than five times the PAN of the school. This means that attending a feeder school will do relatively little on its own to secure a place at the Hasmonean on the one hand; whereas on the other hand not attending a feeder school will mean that a child has virtually no chance of gaining a place there if the school is oversubscribed. I consider that this amounts to conditionality which is prohibited by paragraph 1.9a of the Code. I also consider that naming feeder schools with a combined PAN more of than five times that of the school does not meet the requirement of paragraph 1.15 that the selection of feeder schools must be made on a reasonable basis. I determine that the school's arrangements do not conform with the Code and school must revise its arrangements as quickly as possible

56. Final tie-breaker The objector considered that the arrangements did not contain a tie-breaker capable of separating two applicants who tied for the final available place as required by paragraph 1.8 of the Code. The school agreed at the meeting that it did not have such a tie-breaker and undertook to introduce one. The varied arrangements provide for random allocation supervised by a person independent of the school to be used as a final tie-breaker. I uphold this aspect of the objection as the arrangements when the

objection was made did not conform with the Code but the school need take no further action in this regard.

57. Measurement of distance: The arrangements provide that when the PAN is reached and exceeded in any of the oversubscription categories, priority will be given on the basis of distance between the home and the school. This is a common and commonly accepted approach in admission arrangements. However, in the case of this school, the arrangements provide that for boys the distance will be between the home and boys' site and for girls between the home and the girls' site. The school is a mixed school. It has chosen to organise itself into two site. However, that does not relieve it of the requirement to have one set of admission arrangements which are capable of being applied equally and fairly to all applicants. Arrangements which are different for boys and girls are not capable of being applied equally to all applicants in order as required by paragraph 1.7 of the Code which states that "*Oversubscription criteria must then be applied to all other [other than looked after and previously looked after children] applicants in the order set out in the arrangements.*" Arrangements which do not meet this test are not fair as required by paragraph 14 of the Code. The arrangements do not conform with the Code.

58. Priority for looked after and previously looked after children: As a school with a religious character, the school has two options so far as the priority to be given to looked after and previously looked after children is concerned. It can either give the highest priority to such children of its faith, then to other children of the faith and then to other looked after and previously looked after children. Alternatively, it can give the highest priority to all looked after and previously looked after children. These options are set out in paragraph 1.37 of the Code. The school's arrangements when I first saw them did not follow either of these permitted approaches.

59. First, the arrangements referred in the main body of the text when referring to children of the faith only to "*looked after children*" relegating "*previously looked after children*" to a footnote. When it came to children not of the faith, the arrangements referred only to looked after children and, in this instance, there was no link to the footnote which explained that looked after children was intended to include previously looked after children. A looked after child is not the same as a previously looked after child and I do not consider that the use of a footnote to be an adequate way of making clear that previously looked after children enjoy the same priority as looked after children. For previously looked after children not of the school's faith, this was aggravated by the lack of a link between the main body of the text and the footnote.

60. Second, criterion 8 in the arrangements gives priority to children who are not Orthodox Jews but who attend an Orthodox Jewish primary school and have a genuine desire for Orthodox Jewish schooling. I have dealt above with the fact that this cannot be objectively assessed and cannot therefore be used in oversubscription criteria. Moreover, paragraph 1.38 of the Code states that "*where any element of priority is given in relation to children not of the faith they must give priority to looked after children and previously looked after children not of the faith above other children not of the faith*". By giving a

higher priority to children who are not Orthodox Jews but who attend an Orthodox Jewish primary school, the school is failing to conform with this provision of the Code.

Admission to Year 12

61. Clarity of the arrangements: The arrangements for Y12 explain that the school has set a PAN of two for Y12. The arrangements when I first saw them did not distinguish clearly between those who might transfer from Year 11 (Y11) at the school into Y12 and those who had previously attended other schools and might be admitted to Y12. As children in Y11 who move into Y12 are not being admitted to the school, the arrangements were unclear and did not conform with the Code. The school has now varied its arrangements and they are in this respect much clearer.

62. The oversubscription criteria: The school uses the same religious practice and commitment test for Y12 as for Y7. It also sets academic entry requirements for Y12 as it is entitled to do by virtue of paragraph 2.6 of the Code. The Code also states that where academic entry requirements are set they must be the same for internal and external applicants. The school's oversubscription criteria for Y12 provide as noted above for priority to be given "*in order of GCSE point score*" when more applicants than can be accommodated reach the set academic entry requirements. As this can only apply to external applicants, this means that different academic entry requirements are in effect set for internal and external applicants in contravention of paragraph 2.6 of the Code. Moreover, giving priority on the basis of a total point score is not the same as setting particular requirements for entry to Y12 or to particular courses. It is tantamount to selection by academic ability – as measured by overall GCSE performance – and is prohibited by the Act and by paragraph 1.9 d of the Code.

63. Provision for students to apply: On the section of its website dedicated to the sixth form, there is a link to what is described as the application form. This is in fact the same form that is used for Y7 as the SIF. The website also says that the RRF must also be completed and does not explain that this is only necessary for those applying to be considered for priority for admission against the school's faith based criteria. Moreover, at the time of writing this determination, the form was the same as the original SIF and RRF which are considered above in this determination. While the school has changed the SIF and RRF for Y7, it has failed to change those used for Y12. The requirements relating to admissions apply to Y12 just as they do to Y7. The SIF and RRF used by the school for Y12 fail comprehensively to conform to the Code. This is because of the requirement for both parents to sign the SIF, the inclusion of questions on the RRF which are unnecessary to apply the oversubscription criteria or are prohibited by the Code or both. The school's arrangements do not conform to the Code in terms of the SIF and RRF for Y12.

64. Parent of child to complete the form: Paragraph 2.6 of the code requires that either a child or his or her parent can complete the application for Sixth Form. By using the same SIF for Y12 as is used for Y7, and which does not provide for the young person to complete and sign the SIF, the school's arrangements do not conform with the Code.

Conclusion

65. As set out in this determination, the school's arrangements for Y7 and for Y12 fail in a very large number of ways to comply with the requirements relating to admissions. The school has varied its arrangements to remedy some of these failings. It must take further action so that its arrangements do conform with the Code and must do so by 15 April 2015 at the latest.

Determination

66. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for Hasmorean High School in Barnet.

67. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements.

68. 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 as quickly as possible.

Dated: 18 December 2014

Signed:

Schools Adjudicator: Ms Shan Scott