



DETERMINATION

Case reference:	ADA2826
Referrer:	A member of the public
Admission Authority:	The governing body of Simon Marks Jewish Primary School, Hackney
Date of decision:	27 November 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for Simon Marks Jewish Primary School for admissions in September 2015. I determine that some aspects do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to make the remaining revisions to its admission arrangements as quickly as possible.

The referral

1. The admission arrangements (the arrangements) of Simon Marks Jewish Primary School (the school) for September 2015 have been brought to the attention of the Office of the Schools Adjudicator (OSA) by a member of the public (the referrer) in a referral dated 21 July 2014. The school is a voluntary aided (VA) primary school for children aged 3 to 11 in the London Borough of Hackney with a Jewish religious character. The religious authority for the school is the Chief Rabbi of the United Hebrew Congregations of the Commonwealth (the Office of the Chief Rabbi).

2. The matter brought to my attention which may not be compliant with the requirements of the School Admission Code (the Code) concerns the inclusion in the school's arrangements of priority for admission to reception (also known as Year R) for children who attend the school's nursery class.

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. Although the referral was received after 30 June 2014, the deadline for receipt of objections to admission arrangements for admission in September 2015, it appeared to me that the arrangements may not conform with the requirements

relating to admission arrangements. Accordingly, I am using my power under section 88I(5) of the Act to consider the matter brought to my attention and the arrangements as a whole.

Procedure

5. In considering the arrangements I have had regard to all relevant legislation and the Code.

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

- the referral submitted on an objection form dated 21 July 2014;
- the composite admissions prospectus for 2014 and also for 2015 downloaded from the website of Hackney Council (the council), which include admissions arrangements and reception allocations tables;
- the school's response in an email dated 11 September 2014, together with the 2014 and 2015 arrangements and supporting documents; and
- the response on 19 August 2014 from Hackney Learning Trust (HLT).

7. I arranged a meeting on 21 October 2014 (the meeting) with the school, and a representative of the Office of the Chief Rabbi. HLT was invited to the meeting but chose not to attend. After the meeting correspondence was also submitted as a result of my requests for further information and clarification, and this has been copied to the school, the Office of the Chief Rabbi, the referrer and HLT as appropriate. I have considered the representations made to me at the meeting and the correspondence submitted before and after the meeting.

Background

8. The school is a voluntary aided primary school for boys and girls aged 3 to 11 years. There are 30 places available in the school's nursery class and 30 places in Year R. The school has a number of full-time nursery places funded by the council for children with a range of financial, medical and social needs, which the school believes "*reflects the inner London context in which the school functions.*"

9. The school is designated by the Secretary of State under section 69(3) of the Act as having a Jewish religious character, and as such, is exempted by Schedule 11 to the Equality Act 2010 (the Equality Act) from the requirement in section 85 of the Equality Act not to discriminate on the grounds of religion in terms of the admission of pupils to the school. The school is therefore permitted by Schedule 11 of the Equality Act to prioritise applicants for a place at the school on the basis of faith.

10. The school describes itself as "*an inclusive, modern orthodox Jewish school in Stoke Newington*" which "*welcomes children from across the spectrum of Jewish practice and also from local families who are sympathetic to and respect the school's Jewish and inclusive ethos.*" The school aims "*to prepare children for a changing world through wisdom ancient and modern, becoming familiar with sophisticated technology while learning from Jewish and British values.*"

11. To apply for a Year R place for admission in September 2015, parents are required to complete and return the common application form (CAF) to their local authority by 15 January 2015. Families wishing to apply for a place by reason of the faith-based oversubscription criteria are also expected to return to the school, by the same closing date, a completed supplementary information form (SIF) and obtain four points on a certificate of religious practice (CRP) based on criteria such as the family's synagogue attendance, prior commitment to Jewish education and voluntary work within the community.

12. If there are more applications than places available in reception, the 2015 arrangements specify that the school will allocate places according to the oversubscription criteria which I have summarised below:

For pupils with a CRP:

1. Looked after or previously looked after children;
2. Children subject to a Child Protection Plan.
3. Children with demonstrable acute medical or social need;
4. Children of a member of staff employed at the school for at least 2 years or recruited to fill a post where there is a skill shortage;
5. Children with a sibling on the school roll at the time of admission;
6. Children on the roll of the Simon Marks nursery;
7. Other children

If there are any places remaining, the above criteria will then be applied in the same order to those applicants without a CRP in the criteria numbered 8 to 14 (not listed).

In the event that there are more applicants in any category than places available, priority will be given to children living nearest the school. Distance will be measured from the home to the school using the council's computerised mapping system based on Ordnance Survey data. As a final tie breaker in cases where two or more applicants live equidistant from the school, the remaining place will be allocated using a random computer selection.

13. I note that the 2015 arrangements are the same as those of 2014 except that a priority for the children of staff employed by the school has been introduced at criterion 4. Evidence has been submitted to show that the 2015 arrangements were subject to consultation as part of HLT's borough-wide process, and as no objections were made, the priority for the children of staff was included in the oversubscription criteria.

14. HLT is the part of the council that provides education services which includes the co-ordination of admissions to schools in the area. The council's on-line composite prospectus provides data about allocations to schools for the previous year which is helpful for parents when considering the chances of their child being allocated a place. From the reception allocations data in the composite prospectus for the years 2014 and 2015 (summarised below) I note that the school has not been oversubscribed in recent years.

	PAN	Applications received	Places allocated	With SEN statement	With a CRP						Without a CRP					
					Previously/ Looked after	With a child protection plan	Medical/ social	Sibling	At the Nursery	Other	Previously/ Looked after	With a child protection plan	Medical/ social	Sibling	At the Nursery	Other
2014	30	23	23	0	0	0	0	15	2	0	0	0	0	0	3	3
2013	29	45	25	0	0	0	0	10	7	7	0	0	0	0	-	1

Consideration of Factors

15. The reason given for bringing the arrangements to the attention of the adjudicator is that a number of Jewish primary schools in north-west London had included in their admission arrangements priority for admission to reception for children who had attended that school's nursery. The referrer said that in several previous rulings by the OSA this practice had been found not to comply with the Code and argued that *"It is only fair that all Jewish schools in the same geographic area have to live by the same rules and interpretations of the Code as determined by the OSA."* The referrer quoted that fairness is required by paragraphs 14 and 1.8 of the Code.

16. In the email of 19 August 2014 HLT suggested that there is *"not a level playing field if some ... schools ... give priority to children in the nursery. We would not support all schools giving priority to children in the nursery as this would disadvantage children in other types of early years provision."*

17. In the response to the referral dated 12 September 2014, and in the meeting, the school discussed further admissions data showing that the school has not been oversubscribed in recent years, and as a result, oversubscription criteria have never had to be used by the school for admissions to Year R. The school suggests that *"it is highly unlikely therefore that a significant number of students who have not attended nursery would be unable to gain a place at the school."*

18. In its response of 12 September 2014, the school took exception to the generalisation in the referral to "all Jewish schools in the same geographic area" and "the entire Jewish school community in North West London" because the school is outside the specified geographic area. The school explained it is "situated in North London where it is the only mixed gender Modern Orthodox Jewish primary school. There are no other comparative or similar schools in the borough." The demographic information provided by the school shows that most children on roll live within three miles of the school, and the school states that no applications have been received "from the Jewish school community in North West London." The school states *"that applicants who meet the school's guidance on religious practice and all other applicants of other or no faith groups or practice are admitted to the school on a fair basis. The school maintains its distinctive religious character and celebrates the*

diversity of its students in all aspects of inclusion, equity and equality.”

19. During the meeting on 21 October 2014, the school stressed again how different it was in terms of geographical location and circumstances to the schools described in the referral, and to the schools involved in the recent cases considered by the OSA. I was able to assure the school that determinations are made in the light of the relevant legislation, the Code and the particular circumstances of the school.

20. The school had provided the minutes of a meeting of the governing body on 13 October 2013 at which it was resolved to include in the 2015 arrangements a new priority for the children of staff. The school had also provided evidence that the change had been subject to consultation beforehand, and that no objections had been received. However, there was some doubt that after the consultation period the 2015 arrangements had then been formally determined by the governing body. In the meeting at the school on 21 October 2014, the chair of governors assured me that the 2015 arrangements were determined in the meeting of the governing body in March 2014, and were published immediately afterwards. However, in the follow-up letter of 24 October 2014, the chair of governors confirms that *“on checking the minutes of the governing body meeting which was held on 24 March 2014, we have noted that the determination of admissions arrangements was not minuted ... We believe this situation arose because at this time there were structural changes at the Learning Trust, separating the advisory and minuting functions of the service, together with the fact that we had a temporary minuting clerk to the governors on that day.”* I accept the school’s assurance that the 2015 arrangements were determined by the governing body before the 15 April deadline specified in the Code at paragraph 1.46.

21. After the meeting, the school provided information about the process for admissions to the nursery class and admissions data (summarised in the table below). The school uses the same application form and oversubscription criteria as has been published by HLT for its community schools. As the nursery has not been oversubscribed in recent years, the school confirms that the CRP has never had to be used for the allocation of places, and that all nursery applicants have been able to secure a place.

Entry year to reception	On roll at the start of term	Attended the nursery class	Nursery only and no other priority	Fully funded by HLT
2011	26	21	7	-
2012	26	19	8	-
2013	27 (1 deferred)	22	8	6
2014	25	15	3	12

22. I note that the arrangements make clear that attendance in the Nursery does not guarantee admission to the school in Year R, and that for admission to reception a separate CAF, SIF and CRP form must be completed for a valid application to be made. However, as there are 30 places in the nursery class and 30 places in Year R, I consider that the impression has been given that the school expects all of its reception places to be filled from the nursery.

23. I am also aware that neither the nursery class nor Year R has been

oversubscribed in the last few years and so all the applicants have been allocated a place without the need to operate the oversubscription criteria. However, it could be the case that for admissions in September 2015, there may be more applicants than places available which would mean that places would have to be allocated according to the determined arrangements. It follows therefore that for admissions in September 2015, applicants who had previously attended the nursery class would be prioritised before other children who may live closer to the school. It seems to me that securing a reception place at the school should not be reliant on attendance at the nursery class which is not a compulsory phase of education.

24. It also seems to me that in the hypothetical case where an applicant is the eldest child in a family so that there is no sibling on roll, or where the applicant is an only child, then unless one of the parents works for the school, it may be that some parents may feel under pressure to send their child to the nursery in order to improve their chances of being allocated a reception place. However, for some families, their child attending the nursery class may not be possible or desirable. Accordingly, I consider that the priority for nursery attendance in the oversubscription criteria is unreasonable and so does not comply with paragraph 1.8 of the Code which requires that *“oversubscription criteria must be reasonable.”*

25. Furthermore, it seems unfair to me that for admissions in September 2015, if the school is oversubscribed with applications for a place in Year R, then the chances of a child of statutory school age being allocated a place is greatly reduced by the priority that would be given to children who had attended the nursery class from the age of three years. Therefore, I consider that the priority afforded at criterion 6 to children with a CRP because they are on the roll of the nursery (and the corresponding priority for nursery children without a CRP) is unfair and does not comply with paragraph 14 of the Code which requires *that “in drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair...”*

26. In the meeting, it was clear that the school placed a high regard on supporting the local community and being inclusive, exemplified by the high priority for children from families with a range of financial, medical and social needs. I acknowledge that the school had not foreseen the possibility that the school might be oversubscribed for admissions in September 2015 and that the inclusion of a priority for children who had attended the nursery class would therefore be unreasonable and unfair and contravene the Code at paragraphs 14 and 1.8.

Other matters

27. In reviewing the 2015 admission arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my power under s88I of the Act to review the arrangements as a whole for compliance with the Code. In the meeting I also raised with the school a number of points which appeared to me to contravene the Code, as these points could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code. I offered the school the opportunity to make the amendments to comply with the Code, and agreed to note the progress in my determination. I raised the following points:

- a) Paragraph 2.4 of the Code makes clear that the purpose of the SIF is for the parent to provide additional information which has a direct bearing on decisions about the allocation of places according to the oversubscription criteria. However, the SIF asked for information unnecessary at the application stage such as telephone numbers and email details. Since the meeting, the school has amended the SIF appropriately;
- b) The SIF also asked for the applicant's current placement (name of nursery/ school) but the Code at paragraph 1.9(b) does not permit any account be taken of any school unless it is a named feeder school. This requirement has now been removed from the revised SIF;
- c) The final section of the SIF expected the parent to sign that "*I hereby apply for a place at Simon Marks Jewish Primary School*" which could be confusing as parents are required to apply using the CAF, and not the SIF. The final section of the SIF has since been modified so that in signing, the parent now confirms that all the details are correct, which is an acceptable declaration;
- d) The CRP at item 2 indicated that two points would be given on the basis of participation in Jewish educational activities by the applicant, their parent or a sibling. In the meeting the school agreed to remove the CRP points for sibling participation as there is already a high priority in the oversubscription criteria for having a sibling at the school. I note that CRP has now been amended to remove the points relating to sibling participation;
- e) The CRP provides hyperlinks to the United Synagogue's website for non-exhaustive lists of "*educational opportunities*" and "*volunteer opportunities*" but these were not functioning at the time of the meeting;
- f) The arrangements state that the SIF and the CRP should be sent to the school office "*with full supporting documentation*" by "*15 January in the year prior to entry.*" The school explained in the meeting that the documentation expected would be a current council tax bill or utility bill and a birth certificate. However, as parents are required to provide HLT with proof of residency and date of birth with the CAF at the time of application, it should not be necessary for parents to provide the school with the same documentary evidence. The school may only ask for this evidence after places have been offered. Furthermore, in the meeting the school accepted that the deadline of 15 January "*in the year prior to entry*" was confusing as this could be interpreted as calendar year or academic year. The wording has yet to be modified so that the deadline will be clearer for parents;
- g) The term "*previously looked after children*" has been explained in the first oversubscription criterion, but the term "*looked after children*" is explained in the Notes section at the end of the arrangements. In the meeting, I suggested that in order to avoid confusion for parents, both terms should be explained in the same section, either in the first criterion or else in the Notes section;
- h) The section regarding the right of appeal states that parents should write to the school "*within 14 days of receiving the letter of refusal.*" However, paragraph 2.1(a) of the School Admission Appeals Code requires that appellants **must** have "*at least 20 school days from the date of notification that their application was unsuccessful to prepare and lodge their written*

appeal.” The 2015 arrangements on the school’s website still does not allow parents sufficient time to lodge an appeal; and

- i) Note (iv) in the final section of the arrangements states that where a child is cared for by a childminder during the week, *“the minder’s address can be used to determine nearness to school.”* The Code requires that *“admission authorities **must** clearly set out how distance from home to the school will be measured”* but *“home”* refers to the applicant’s family home. There is no provision in the Code to permit places to be allocated on the basis of how close a childminder lives to the school. This aspect of the arrangements still needs to be rectified.

Conclusion

28. Admissions data for the last few years shows that the school has not been oversubscribed, and so the oversubscription criteria have not had to be used. However, the school has chosen to have 30 places available in the nursery class, and 30 places in the reception year, and in my opinion, this creates the impression that the school expects all of its Year R places to be filled by children from the nursery. As the school prioritises in the oversubscription criteria those children who are on roll at the nursery ahead of other children without a sibling on the school roll, or a parent employed by the school, then some parents may feel under pressure to send their child to the nursery in order to have any chance of securing a reception place. However, for some families, it may not be possible or desirable for their child to attend the nursery. Accordingly, I conclude that the priority for children who have attended the nursery is unreasonable, and does not comply with paragraph 1.8 of the Code.

29. Furthermore, although the school has not been oversubscribed in the last few years, it may be that for admissions in September 2015 there will be more applications than the places available in Year R, and so the oversubscription criteria would have to be used. It follows that children who had attended the non-compulsory nursery class would then have a higher priority for a reception place than other children for the start of their compulsory education, even if those other children live closer to the school. I consider it would be unfair for Year R places to be allocated to children on the basis of their prior attendance in the non-compulsory nursery phase of education ahead of other children who may live closer to the school. It is therefore unfair that applicants may be prioritised for a reception place on the basis of having been on roll at the nursery, which does not comply with the requirement of the Code at paragraph 14 that arrangements must be fair.

30. For the reasons explained in the paragraphs above, I have concluded that some aspects of the 2015 arrangements do not conform with the requirements relating to admission arrangements. I recognise that the school has amended some aspects already, but other matters have still to be addressed.

Determination

31. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for Simon Marks Jewish

Primary School for admissions in September 2015. I determine that some aspects do not conform with the requirements relating to admission arrangements.

32. By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to make the remaining revisions to its admission arrangements as quickly as possible.

Dated: 27 November 2014

Signed:

Schools Adjudicator: Ms Cecilia Galloway