

## **DETERMINATION**

**Case reference:** ADA/002263

**Objector:** Anonymous

**Admission Authority:** The governing body of Clore Shalom School, Hertfordshire

**Date of decision:** 3 August 2012

### **Determination**

**In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Clore Shalom School, Hertfordshire.**

**I have also considered the arrangements in accordance with section 88I (5) of the Act. There are elements that do not comply with the School Admissions Code in the ways set out in this adjudication.**

**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 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 a person (the objector), who wishes to remain anonymous, about the admission arrangements (the arrangements) for Clore Shalom School (the school), a Voluntary Aided Primary School with an attached nursery for September 2013. The maintaining authority for the school is Hertfordshire County Council (the council). The objection is to the published admission arrangements for the Reception class that give priority to those children who attend the nursery class and to the use of membership of a synagogue as an admissions criterion.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted his objection to these determined arrangements on 21 May 2012. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

3. As the objector provided the adjudicator with his name and address, an anonymous objection is allowable under Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:
  - a) the objector's email letter of objection dated 21 May 2012 and subsequent comments on the responses made by other parties;
  - b) the school's response to the objection and supporting documents;
  - c) the council's response to the objection and supporting documents;
  - d) the council's composite prospectus for parents seeking admission to schools in the area in September 2012;
  - e) a map of the area identifying neighbouring schools;
  - f) a copy of correspondence with the synagogue concerning payment of fees relating to membership;
  - g) a copy of a map showing the distribution of pupils' home addresses;
  - h) copies of the minutes of the meeting of the admissions committee of the governing body dated 4 November 2011 at which the arrangements were determined; and
  - i) a copy of the determined arrangements.
5. I visited the school on 12 July 2012 and met with the headteacher, a governor, the school admissions officer and an officer of the council to discuss the admission arrangements.

### **The Objection**

6. The first part of the objection is to rule 3 of the school's published admission arrangements which gives priority in the oversubscription criteria for the school's Reception class to those children who are enrolled at the nursery at the date of application for places. The objector points out that the admission number for the nursery is 30 and the admission number for Reception is also 30. The school is popular and oversubscribed and so the admission arrangements for the nursery effectively determine the arrangements for the Reception class since few parents will choose to change to a different school for Reception.
7. The second part of the objection concerns the potential for connection

between the admissions process and financial payment to a synagogue for membership.

## Background

8. The school confirms that this is a popular and oversubscribed school and points out that there is no advice in the Code against giving priority to children who have attended the nursery when they apply for places in reception. The school states that the introduction of this priority was prompted by the weight of parental opinion over the years, when parents obtained places for their children in the nursery but were then unsuccessful in gaining a place in the Reception class. This was considered to be very disruptive for the families concerned. The school also argues that the continuity of provision assists children in their learning, however, the parental feedback and support for this criterion appears to be the key argument here.
9. The school is concerned that in the event that a child is able to attend the nursery but is not subsequently able to attend the school the feelings of rejection for the child and their family are distressing. This may well be the case for parents whose children are given a place in the nursery, but for parents not successful in gaining a nursery place there is no right of appeal as there is for admission to Reception and this makes the process fundamentally unfair and lacking in transparency. The school makes much of integrating the nursery pupils into the life of the main school and in doing so increases the potential for the feelings of rejection that they wish to avoid should a child not gain a place in the Reception class.
10. The table provided by the school shows the number of applications over the last three years and the number of children who transfer from the nursery to the Reception class

	Entry 2012	2011	2010
Total Applications Nursery	73	57	101
Total Applications Reception	52	61	69
Transfer Nursery to reception	29	29	29
Appeals for Reception places	0	1 (unsuccessful)	0
In year applications for Reception places (applied after September 1 <sup>st</sup> )	N/A yet	0	2 (neither offered a place)

Neither of the in year applicants in 2010 obtained a place at the school as the pupils who took up the Reception places are still on roll.

11. The faith criterion for admission to the school has three categories. The first priority is for children whose parent or guardian is a member of one of the sponsoring movements or sponsoring synagogues of the school and these are currently Liberal, Masorti and Reform. The second priority is for membership of any synagogue and the third priority is for any other child. In the last three years the admissions to the nursery and to Reception have only been from the first priority and the school has had to apply the

distance criterion to manage the oversubscription within this category.

### **Consideration of Factors**

12. The first part of this objection is about the inclusion of a criterion in the school's admission arrangements that gives priority for Reception admissions to those who have already been admitted to the nursery. The objector argues that admissions to the nursery are effectively the same as admissions to Reception. The information in the table above that has been provided by the school confirms this and shows that 29 of the 30 places in the Reception class were filled with pupils transferring from the nursery in each of the last three years.
13. The Code is silent on this specific criterion. The school makes the argument that the use of the criterion is reasonable on the basis that parents have requested it and it provides continuity for the children involved.
14. Whilst the Code may not specifically permit or prohibit this criterion, other provisions within the Code lead me to consider that this criterion is not compliant. In particular, paragraph 1.8 of the Code requires oversubscription criteria to be clear, objective and procedurally fair. The nursery admission number of 30 and the school Reception admission number of 30 are the same so, in practice, admissions to the nursery are also admissions to the Reception class. This in effect places an unfair pre-condition upon the admissions to the Reception class that prevents there being an open arrangement for admission to the school. The Code explains conditionality in its glossary as an "oversubscription criterion that stipulates conditions which affect the priority given to an application, for example taking account of other preferences or giving priority to families who include in their other preferences a particular type of school .....Conditionality is prohibited by this Code."
15. In addition, the Code at paragraph 1.9 (e) prohibits giving priority to a child on the basis of any practical or financial support parents may give to the school or any associated organisation. By taking up a place at the nursery the parent is financially supporting the nursery indirectly through the state-funded 15 hours nursery provision, and therefore there is financial support to the nursery which is an associated organisation. The school also confirmed that it offers parents the opportunity to purchase additional day care to supplement the 15 hours of funded provision.
16. The objector argues that because there will be no additional places at the time of admission to Reception there will be no point in applying for a Reception place if a parent has not already obtained a place in the nursery and that there is no appeal mechanism for challenging the arrangements for admission to the nursery as there is for admission to the Reception class as set out in paragraph 2.24 of the Code.
17. The school has responded by saying that if a parent felt that there had been a mistake made at the time of admission to the nursery and their child was not offered a place, they may apply for a Reception place and if

unsuccessful could make reference to the admission process error to the nursery in their appeal for a Reception place.

18. The level of oversubscription to the nursery has been between 25 and 70 places in the last three years. The school offers reassurance that it is meticulous in administering the oversubscription criteria and I have no reason to believe this is not the case. The school admissions officer confirmed that she had many discussions with parents and was willing to share with them how the criteria had been applied in their case and why they were unsuccessful in obtaining a place. The school confirmed that there was no appeal process for nursery places.
19. In my questions to the school I asked how the admission criteria for the nursery and Reception work in practice. The school responded that in the last three years all the admissions to the nursery came from the first priority faith group and distance was used as the ranking criterion to select the applications to be allocated places once looked after children and medical needs and siblings had been considered. 29 of the admissions to Reception out of the 30 places have been allocated on the basis of prior attendance at the nursery.
20. The school's admission policy is published on its website and states that "When considering applications for Reception Class, we give priority to children who are enrolled in our Nursery. When so doing, we have taken care to avoid disadvantaging families who live nearer, move into the area or make other choices for nursery education." In clarifying what this statement about not disadvantaging families means, the school explained as follows:
21. "Families who live nearer - Our families live quite near to the school, for a faith school, unless, having enrolled an older child in the school, they subsequently move house, giving younger siblings a place with a longer distance to travel." The school supplied a map that shows where the pupils live and it can be seen that there is a concentration of children living in Boreham Wood, Radlett and Shenley which are the nearest villages and towns. However, there are also children living as far away as Welwyn and Hemel Hempstead. The school explained that the more distant pupils were probably admitted under the sibling criterion where the family had moved away from the school before a younger sibling had been admitted.
22. "Families who move into the area - We monitor applications for Reception Class to see if there are any children newly moved to the area who meet the Priority 1 criterion, which is where our oversubscription has until now occurred and who live closer than the furthest non-sibling Nursery child who has accepted a Reception place. There is no evidence to confirm that there have been any such cases during the last 3 years." It is not clear what the school would do in this circumstance because it has already promised to give priority to the nursery class children and so there may well not be an available place for an additional child. It is also unclear what "moved into the area" means and could mean moving from Watford to St Albans or it could mean moving from Liverpool to St Albans.

23. "Families who make other choices for Nursery education - We approached this by making sure our Nursery meets parents' needs. We set up our afternoon private play group, which is run at cost, and therefore very competitively priced. This enables those in need of longer provision than 15 hours, as provided through the Local Authority, to have the option of choosing our nursery. We provide an early morning drop off, half an hour before the official start of the Nursery session, so that working parents can get to work on time." This statement explains how the school is willing to help parents who wish their children to attend the school nursery and who need to have full time child care but it does not help to explain how it helps parents who make other arrangements for nursery education obtain a place in the school Reception class. The data shows that they have a very small chance of gaining a place.
24. When determining who fulfils the faith criterion, the criterion used by the school until 2012 has been membership of a synagogue. The objector raises the concern that membership of the synagogue requires a subscription to be paid and the objector has provided details of this process at one synagogue where the family have become members.
25. The governing body has acknowledged this concern about its faith criterion although it argues that membership of a synagogue does not necessarily require a subscription to be paid since financial support is always available. It has changed the criteria for nursery and Reception admissions for 2013 by adding an additional criterion which states that regular attendance at a synagogue can be a substitute for membership in determining whether a family meets the faith criterion. This has improved the criterion, but the continued use of membership of a synagogue for which a financial contribution is made is not compliant with paragraph 1.9(e) of the Code.

### **Other Matters**

26. I looked at the school's admission arrangements as a whole and in my meeting with the school raised some further areas where the school admission arrangements could be clarified on the school website.
27. The school has agreed to look at how it can ensure that the admission criteria and the admission policy are combined into a single document on the website. The document needs to have a clear indication of its status. In particular it should be clear if it is a consultation draft and if so how comments can be made or if it is a statement of the final arrangements and if so when these were determined, when they are due for review and the admission year that the arrangements apply to.
28. In the supplementary information form (SIF) that is available on the website for parents seeking admission to the school, membership of a synagogue is referred to. This is discussed in paragraph 25 above. The form will need to be amended to ensure that it is compliant with the Code.

## **Conclusion**

29. The central issue in this objection is the use of attendance at the nursery as a criterion for admission to the Reception class in the school. The arguments put forward by the school are about continuity for children and their families. For parents that have been successful in obtaining a place for their child in the nursery the arrangements are welcome. For families who are not successful in obtaining a place in the nursery, the arrangements will feel unfair, particularly if they are Jewish and live near to the school.
30. While the Code may not specifically prohibit this criterion, other provisions within the Code have led me to conclude that this criterion contravenes the Code. In particular, paragraph 1.8 of the Code requires oversubscription criteria to be clear, objective and procedurally fair. The nursery admission number of 30 and the school Reception admission number of 30 are the same so, in practice, admissions to the nursery are also admissions to the Reception class. As a result there is an unfair pre-condition upon the admissions to the Reception class that prevents there being a clear and objective arrangement for admission to the school that is procedurally fair to all applicants.
31. In addition, the Code at paragraph 1.9(e) prohibits giving priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation. By taking up a place at the nursery the parent is paying indirectly through the state-funded 15 hours nursery provision, and therefore there is financial support to the nursery which is an associated organisation. The school also confirmed that it offers parents the opportunity to purchase additional day care to supplement the 15 hours of funded provision.
32. In summary, the school has determined that one of the criteria for managing oversubscription for admission to the school Reception class should be attendance at the school nursery. This is not compliant with the Code.
33. The governing body has partially addressed the issue of a potential link between a financial payment to a synagogue and the school's admission criteria to the nursery and reception for 2013. However, the continued use of membership of a synagogue as a criterion is not compliant with the Code.

## **Determination**

34. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Clore Shalom School, Hertfordshire
35. I have also considered the arrangements in accordance with section 88I (5) of the Act. There are elements that do not comply with the School Admissions Code in the ways set out in this adjudication.

36. 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 revise its admission arrangements as quickly as possible.

Dated: 3 August 2012

Signed:

Schools Adjudicator: David Lennard Jones