



DETERMINATION

Case reference: ADA2823

Referrer: A member of the public

Admission Authority: The governing body of Menorah Foundation School, Edgware

Date of decision: 11 November 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements determined by the governing body of Menorah Foundation School for September 2015. I determine that they 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. The admission arrangements (the arrangements) of Menorah Foundation 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 Barnet which is the local authority (the LA). The school has a Jewish religious character. The matter brought to my attention concerns the inclusion of priority for admission to reception (YR) for children who attend the school's nursery class.

Jurisdiction

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body which is the admission authority for the school. Objections to admission arrangements for admission in September 2015 had to be made on or before 30 June 2014. However, as it appeared to me that the arrangements may not conform with the requirements relating to admission arrangements 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

3. In considering this matter 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:
 1. the referral dated 21 July 2014 and subsequent comments dated 13 August 2014;
 2. the school's response to the referral dated 23 September 2014 and supporting documents;
 3. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014 this being the most recent version of this document available on the LA's website;
 4. information received from the LA about the recent pattern of admissions to the school;
 5. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 6. a copy of the determined arrangements.
5. I have also taken account of information received during a meeting I convened on 1 October 2014 at the school attended by representatives of the school and the LA. The representative of the Rabbinic Authority for the school did not accept their invitation to the meeting.

The Referral

6. The reason given for bring 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 YR 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.

Other Matters

7. When I read through the arrangements I was concerned that they may not be as clear on some matters as they should be as is required by paragraph 14 of the Code.
8. I also noticed that the oversubscription criteria appeared not to comply with paragraphs 1.7 and 1.37 of the Code which require the highest priority to be given to looked after and previously looked after children.

9. The school's definition of the religious criteria and assessment of how they would be met seemed to me not to comply with paragraphs 1.8, 1.9, 1.37 and 1.38 of the Code.
10. I was also concerned that the supplementary information form (SIF) used by the school might not comply with paragraph 2.4 of the Code which prohibits certain information being requested on such forms.

Background

11. The school offers 56 places in its nursery to children who are aged 3. These 56 places are all full time with half funded by the early years entitlement grant and the remainder by the school. The school requests voluntary contributions from parents towards the additional hours.
12. Not all of the places in the nursery class are currently full; it has 51 children on roll.
13. In September 2013 the published admission number (PAN) was raised from 30 to 58 and then to 60 for September 2014. The LA is currently funding the expansion of the school to enable it to take up to 60 in each year group reflecting a growing demand for places. The number on roll on 1 October 2014 is shown in the following table.

Year Group	R	1	2	3	4	5	6
Number on Roll	58	56	30	30	30	48	30

14. The oversubscription criteria for YR can be summarised as:
 1. children in care;
 2. children who meet the religious criteria and have attended the nursery;
 3. children who meet the religious criteria with a sibling at the school;
 4. children who meet the religious criteria and with a sibling who previously attended the school;
 5. children who meet the religious criteria whose family has moved into a defined area within the last six months;
 6. other children who meet the religious criteria;
 7. other children in care; and
 8. other children.
15. The school uses a SIF to collect information on applicants which

includes a reference form for the family Rabbi to complete.

16. Schedule 4 to The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements)(England) Regulations 2012 (the Regulations) lists the representative body of religion for the school as The Union of Orthodox Hebrew Congregations.

Consideration of Factors

17. The referral made reference to previous cases considered by the OSA concerning priority for admission to YR for children attending a particular nursery. Where an adjudicator finds that a school's arrangements do not comply with the Code it will be in the context of the whole of that school's arrangements and that school's circumstances. For that reason each adjudicator will consider the particular arrangements that are in front of him or her and will not be bound by other determinations even if the arrangements in question appear similar. All determinations are made with regard to the relevant legislation and the Code.
18. The argument set out by the referrer was that schools which had been required to stop using attendance at their nursery to give priority for YR had seen their nurseries "*placed at a disadvantage in relation to other Jewish schools*". The referral said this was "*unfair as parents who want to send their children to one of those nurseries will have a disincentive to do so because if their children don't get into that school's reception class they will have little or no chance or be extremely unlikely to get a place at one of the other Jewish schools*".
19. This appears to me to be saying that linking admission to reception to attendance of the nursery is an incentive for parents to send their child to the nursery or could be taken as a requirement. It also identifies the link between nursery and reception as reducing the likelihood of a child obtaining a place in reception if they did not attend the school's nursery.
20. The school put forward a number of points in response to the referral and expanded on these at the meeting. The first was that its admissions criteria should be fair to prospective children applying to the school, not to the interests of other schools. Secondly it questioned whether its admissions criteria should have regard to the position of parents who wanted to send their children to another school.
21. The school recognised that decisions about fairness require interests of different groups to be balanced. The school has acknowledged that families who move into the area after nursery places had been allocated would be disadvantaged by the nursery criterion and have suggested that by putting the nursery criterion below the one for families who have recently moved in to the area this disadvantage would be addressed.
22. The school however thinks that for parents who choose to send their

children to a different nursery to be given priority for a place in reception before a parent who had already committed to the school would be unfair and cause insecurity for the family disrupting the child's stability and early learning.

23. As for parents who choose not to send their children to any nursery, the school believes that admissions criteria should encourage parents to send their children to high quality nurseries as this will benefit their children. Deletion of the criterion would, they argue, discourage parents from sending their children to the nursery as they would not be confident they would gain a place of their choice in YR.
24. The school also argued that there are more places available in YR than in the nursery so there were always places for some new children to be admitted who had not attended the nursery.
25. Finally the school made the point that they invest heavily in their families in the nursery and this benefits the children's learning and development later in the school.
26. The LA said that based on the pattern of parental preferences, parents in the Jewish community had clear views on the Jewish ethos they wanted for their children at school. This means that unless they were able to access a specific school they would consider private or non-denominational schools before other publicly funded Jewish schools.
27. The LA is using basic need funding to increase the number of places at this and other VA schools alongside increased capacity in community schools to reflect the growing demand for places for children from all faith communities.
28. The school said they had no contact with the Rabbinic Authority set in the regulations and they would like to change to one which was closer to its ethos. A local community Rabbi, referred to as the school's principal, provides advice on faith matters. The Rabbi endorsed the LA's comments on the ethos of different Jewish schools and the pattern of parental preferences. He considered that the system is currently stable and any change would be disruptive and upset many families.
29. The school is correct in understanding that the Code requires arrangements to be fair to parents and children, not institutions. The only account that can be taken of parents' preferences for schools for their children is through the LA's scheme of co-ordination, it is not a factor that individual schools can consider. While I recognise the school's willingness to be flexible and consider lowering the priority given to children for the nursery I have to consider the arrangements as published, not what they might be or whether different arrangements would comply with the Code.
30. The Code neither specifically permits nor prohibits giving priority for places in reception to children who attend a school's nursery class. It does however make it clear in paragraph 15d that "*a separate*

application **must** be made for any transfer from nursery to primary school". Prioritising children at the nursery for places in reception must therefore be tested against the general requirements of Code as a whole, in particular paragraphs 14 and 1.8.

31. Paragraph 14 of the Code says "*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*" Furthermore paragraph 1.8 says "*Oversubscription criteria **must** be reasonable, clear, objective, [and] procedurally fair*".
32. The school has said that because there are more places in YR than in the nursery this gave the opportunity for others to take up places. The LA has supplied data on the recent pattern of admissions which indicates the opportunity would be very limited. It could be said the demand is not currently there for more places, but the LA has said they expect an increased demand for places at Jewish schools in the future.

Year	PAN	Places offered to children in the nursery	Total places offered
2014	60	56	59
2013	58	56	58
2012	30	30	30
2011	30	27	30

33. The law does not require parents to educate their children until the term following their fifth birthday. From the figures above it would appear that if a parent does not obtain a place for their child in the nursery class at this school when they are three years old, then the possibility of them securing a place in YR when the child is of statutory school age is much reduced. This would seem to me to be unfair on parents who for example might wish to have their children at home with them, or for grandparents or other family members to provide childcare, or use other childcare provision until they are of school age.
34. Other groups who would be disadvantaged include a family who moved into the area after places at the nursery had been allocated or one who might not have been able to meet the religious criteria when their child was 3 but might be able to do so a year later through changes in family circumstances or changes in their religious practice.

35. The school recognises the concern for families who move into the area served by the school after nursery places were allocated and Criterion 5 does give some priority for these families. However the data supplied by the LA shows that no one has been admitted under this criterion in the last four years. This contrasts with the description of many Jewish families moving to Barnet that I was given at the meeting.
36. For admission to the nursery class for September 2014 parents were asked to apply by 15 October 2013. For children starting in YR in September 2014 the closing date for applications was three months later. Some of these applications for places at the nursery could be for children as young as 26 months old. This seems to me to be very early for parents to be required to take action to give their child the possibility of attending a particular primary school. Also by being so early it is conceivable that the deadline would not be expected and would be missed by some parents who would be subsequently disadvantaged if they wanted to apply for the school.
37. The admission arrangements for the nursery are not required to comply with the Code. However, securing a place at the nursery effectively secures a place in the school. In the paragraphs which follow, I have therefore examined whether the admission arrangements for the nursery comply with the Code, in order to assess whether it would be possible for a child to be admitted to the school through the YR nursery criterion having been first admitted to the nursery on grounds that did not comply with the Code.
38. The admission arrangements for the nursery are not the same as those for the school. The main differences are the oversubscription criteria and the application form.
39. If the nursery is oversubscribed, priority is given in the following order:
1. looked after children;
 2. children who meet the religious criteria who are siblings of children at the nursery or the school;
 3. children whose elder siblings all went to the nursery; and
 4. children who have a sibling formerly at the school.
40. The arrangements go on to say *"Priority will be given to children of parents who have consistently been regular attenders of Synagogues affiliated to the Union of Hebrew Congregations or other similar synagogues"*.
41. Paragraph 1.7 of the Code requires previously looked after children to be given highest priority in oversubscription criteria alongside looked after children in the oversubscription criteria for YR. This requirement does not apply to the nursery, however any previously looked after child who could not secure a place in the nursery would, if the arrangements for YR complied with the Code, have higher priority than

the nursery children in YR. They would therefore be able to secure a place in YR and thus would not be disadvantaged by failing to get a place in the nursery. I will deal with the non-compliance with this requirement in the school's arrangements later in this determination.

42. In the event of oversubscription, I do not think all 56 places in the nursery could be filled by looked after children or siblings, even if, as it would appear from the wording quoted above, those siblings were not all required to meet the religious criteria. Paragraph 1.6 of the Code requires there to be oversubscription criteria to allocate places in the event of oversubscription. There therefore needs to be some method of deciding how the remaining places will be allocated between the remaining applicants who are not siblings. I cannot see from these oversubscription criteria how a child who was not a sibling would be allocated a place at the nursery in the reasonable, clear and objective way that would comply with paragraph 1.8 of the Code.
43. In paragraph 1.37 of the Code it says "*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*" It is not clear to me what constitutes "*regular attendance*" in the arrangements for the nursery or how this would be assessed objectively and fairly as required by the Code.
44. This leads on to the consideration of the application form. This asks for information prohibited from being part of admission arrangements for YR by paragraph 1.9 of the Code such as parents' occupations. It does not however seek to obtain information that might help determine whether the religious criteria are met, not even asking for the name of the Rabbi who might be able to attest to the family's religious practice.
45. In the absence of clarity over how children who were not looked after or siblings would be admitted and on the contents of the application form I am of the opinion that it would be possible for a child to be admitted to the nursery on grounds that would not comply with the Code. Such a child could therefore have priority for admission to the school which it should not have. If YR was oversubscribed this child would take the place of one who would otherwise have had higher priority for the place in YR and this cannot be fair.
46. Another way in which the arrangements differ is that there is no right of appeal in the arrangements for the nursery. The right of appeal is an important compulsory element of the school admissions system. While it is not required for admissions to nursery, the fact that there is in the case of this nursery no right of appeal leaves the possibility that someone entitled to a place in the nursery on a proper application of the nursery criteria might fail to secure one and thereby lose priority for a place at the school. This would not be fair.
47. I have also considered the fairness to those families who have decided to place their child at the nursery if there were no priority for children from the nursery at the school. The school expressed a view that continuity across the early years foundation stage was important. I do

not dispute this, but without the nursery criterion, most nursery children would still have priority for places in YR and have that continuity. There is no inherent reason why children who have been in other settings will not assimilate quickly into YR or why children from the nursery will not assimilate smoothly into YR at other schools

48. I have consequently reached the view that giving priority for places in YR at the school to children who attended the nursery is not fair and does not comply with paragraphs 14 and 1.8 of the Code.

Other Matters

Clarity

49. Paragraph 14 of the Code quoted above requires arrangements to be clear. There are two ways in which I think the arrangements are not clear. The first is that there is no mention of how a child with a statement of special educational needs (SEN) naming the school would be admitted. Paragraph 1.6 of the Code says that such children **must** be admitted and parents need to be aware of this. At the meeting the school acknowledged this omission and undertook to rectify it.
50. The second point which I think is unclear is the wording of the criterion 5. This is *"A child of appropriate age for entry who meets the religious criteria and is from a family who have moved into the community (defined by the postcodes NW4, HA8, NW11, together with addresses closer to the school than the nearest boundaries of these postcode areas) from outside the Greater London area (defined by being the area within the boundaries of the M25 motorway) within six months before the date of application and who has no older siblings currently at the school."*
51. At the meeting I asked for a map showing this area to be sent to me. The LA offered to provide me with a map, but was eventually unable to do so. I have therefore constructed a map for myself in order to understand the criterion. NW11 is the farthest postcode from the school, at its closest point it is just less than five kilometres from the school in a straight line. A circle of radius five kilometres centred on the school includes all of NW4 and HA8. This leads me to think there might be a simpler way of describing this area even if the school was unable to publish a map on its website. Simply stating the postcodes does not in my opinion meet the need for clarity in the arrangements.

Looked after and previously looked after children

52. Paragraph 1.7 of the Code says *"All schools **must** have oversubscription criteria for each 'relevant age group' and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a residence order or special guardianship order). Further references to previously*

*looked after children in this Code means such children who were adopted (or subject to residence orders or special guardianship orders) immediately following having been looked after. Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements."*

53. In addition paragraph 1.37 says "*Admission authorities for faith schools may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. 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*".

54. The school's first criterion is worded "*Children in care as defined by the Children Act 1989 who meet the religious criteria.*" And the seventh criterion says "*All other children in care.*" These two criteria do not comply with the Code and at the meeting the school agreed to change the wording of in order to comply with the Code.

Faith-based oversubscription criteria

55. The school's faith-based criteria require applicants to demonstrate:

- evidence of regular synagogue attendance at Orthodox Synagogues affiliated to Orthodox Jewish Congregations;
- adherence to Jewish Laws including kashrus and tznius;
- involvement in Orthodox Jewish communal life; and
- involvement and participation in Jewish adult education and further studies.

56. The arrangements continue to say "*The above commitment must be confirmed by the Rabbi of the Orthodox Jewish Synagogue of which the applicant child's family are regular attenders.*" The school's SIF includes a form for a Rabbi to complete which has 12 questions on it some of which address the bullet points above.

57. Paragraph 1.8 of the Code says "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.* Other key references to the Code are found in paragraph 1.37 of the Code where it says "*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*" And in paragraph 1.38 "*Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based oversubscription criteria*". The paragraph continues "*They **must** also consult with the body or person*

representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.”

58. I have also considered the faith-based criteria against the requirement of paragraph 1.9i of the Code that admission authorities **must not** *“prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination.”*
59. The school has said that it relies on the Rabbi appointed as its principal for guidance on religious matters and not the Rabbinic Authority specified in the Regulations. It does however say in the arrangements that disputes over interpretation of practice *“will be settled by reference to the presiding Rabbi of the Union of Orthodox Hebrew Congregations”* which is the faith body specified in the Regulations.
60. While the school may prefer to seek advice on religious matters from another source, the Code requires it to have regard to advice from, and consult with, the body specified in the Regulations. Unless it has done so these aspects of the arrangements cannot comply with the Code. Asking the Rabbinic Authority to settle disputes is not the same thing as having regard to its guidance, or consulting it, when setting admission arrangements.
61. Had the school taken full regard to any advice from the Rabbinic Authority, fully consulted it and then continued to set these arrangements, my findings below would still apply.
62. I am not satisfied that the term *“regular synagogue attendance”* used in the arrangements meets the requirements of the Code to be objective, or enable parents to understand how they may reasonably meet it as required by the Code.
63. I am of the view that as well as not complying with paragraph 1.38 of the Code, they do not comply with paragraphs 1.8 and 1.37 of the Code. Parents require guidance as to how they can demonstrate commitment and observance of Jewish practices in a way that is clear and objective. I have other concerns about the questions the Rabbi is asked on the SIF which illustrate further the lack of objectivity in the definition of religious practice.

The supplementary information form

64. Paragraph 2.4 of the Code says *“In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They must not ask, or use supplementary forms that ask, for any of the information prohibited by*

paragraph 1.9 above or for:

a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);

b) the first language of parents or the child;

c) details about parents' or a child's disabilities, special educational needs or medical conditions;

d) parents to agree to support the ethos of the school in a practical way;

e) both parents to sign the form, or for the child to complete the form."

65. The SIF includes questions asking for details of "*all persons who have legal responsibility for this pupil*", whether the application is for a child in care and has space for two parents or guardians to sign. This does not comply with the Code because the care status of the child will be covered in the common application form as all admission authorities **must** give looked after and previously looked after children the highest priority so this should not appear on the SIF. Providing space for details and signature of two parents or guardians could be interpreted as a requirement for both to sign which it **must not** be, a space for one parent or guardian would remove any doubt on this issue.

66. The last two pages of the SIF are described as a "*Family Rabbi Confidential Reference Form*" which applicants are asked to give to their Rabbi to complete. There are 12 questions on the form.

1. How long have you known this family?
2. In what capacity do you know this family?
3. Is this family active in your synagogue? Yes/No/Unsure
4. If yes, please give examples.
5. Does the father attend synagogue during the week, morning, evening or both. Please specify.
6. Do either of the parents attend any weekly shiurim?
7. Do you believe the mother keeps all the mitzvos pertaining to Orthodox Jewish women? Yes/No/Unsure
8. Do you believe, to the best of your knowledge, this family observes Shabbos and Yomim Tovim. Yes/No/Unsure
9. Do you believe the family adheres to the Laws of Kashrus, both at home and when they eat out? Yes/No/Unsure

10. Do you believe that this family has a genuine desire for orthodox Jewish Schooling for their child? Yes/No/Unsure
 11. Do you believe that this family will be suitable for Menorah Foundation and will support the ethos of the school? (please refer to the ethos statement on the reverse of this page) Yes/No/Unsure
 12. Do you have any other comments or information to help us assess the suitability of this child for our school?
67. Paragraph 1.9i of the Code quoted above prohibits consideration of a child's or their parents' activities in admission arrangements unless they are activities laid out by the body representing the religion. The school is not in possession of any guidance from the body specified in the Regulations representing the religion and that body chose not to attend the meeting. Therefore, I have been unable to ascertain whether or not the Rabbinic Authority has laid out activities for consideration. Were these activities those laid out by the Rabbinic Authority then my findings below would still hold.
68. These questions can only be to establish if a child meets the religious criteria. I am not satisfied as stated above that the definition of religious criteria was sufficiently clear and objective to meet the requirements of the Code. The following questions illustrate that inadequacy further. Would the number of "yes" answers affect the priority for a child? How many "yes" responses are required to meet the religious criteria? Would a "yes" for question 7 be more important than a "yes" for question 8? Would a "no" for any question mean that the religious criteria were not met? Paragraph 1.37 of the Code requires that *"parents can easily understand how any faith-based criteria can be reasonably satisfied."*
69. The length of time and capacity that a Rabbi has known the family asked in questions 1 and 2 has no bearing on whether or not the family meets the religious criteria. Asking those questions does not comply with paragraph 2.4.
70. Questions 3 and 4 are about activity in the synagogue. There is no guidance for parents about what activity in the synagogue is being looked for and how they might show they meet the criteria. Again paragraph 1.9i of the Code only allows activities laid down by the body representing the religion to be considered.
71. If the number of "yes" responses is important in deciding if a family meets the religious criteria then asking in question 5 about the frequency that the father attends the synagogue cannot be fair on a child who does not have a father. Having met representatives of the school I sure their intention is not to discriminate against fatherless children but that is what asking this question does and it does not comply with the Code.

72. I understand that learning about the faith is an important element of Judaism. If in question 6 a parent attending weekly shiurim is the only way this can be demonstrated it would seem to me to be unfair on, for example, single parent families or those with caring responsibilities who may find attending weekly difficult. I think it is also open to challenge on the basis of the length of time that parents have been attending shiurim, is it for three months before the form is completed or six or twelve? This is not clear objective or fair.
73. Questions 7, 8 and 9 ask the Rabbi "*Do you believe*" that the family observes certain Jewish laws and practices. It is not what the Rabbi believes, however valid that belief may be, that confirms whether an applicant meets the religious criteria; it is what the applicant does that is important. These questions introduce a degree of subjectivity not permitted by the Code.
74. Similarly in questions 10 and 11 the Rabbi is asked for their opinion on matters which do not have "*a direct bearing on decisions about oversubscription criteria*". Parents would not have applied for the school if they did not have a "*desire for Orthodox Jewish Schooling for their child*" and support for the school's ethos is not, and cannot be, a precondition for admission.
75. Finally question 12 is entirely subjective and does not relate to any of the oversubscription criteria.
76. The SIF which includes the "Family Rabbi Confidential Reference Form" does not comply with the requirements of the Code.

Conclusion

77. Parents are not required by law to send their children to nursery at the age of 3. By giving priority for places in the reception class to children who have attend the school's nursery only a small number of places are available for others when children are required to attend school. There could be families who have made other choices of pre-school provision or who were unable to apply for a place at the nursery or who would have liked a place but were not allocated one. I do not consider this to be fair.
78. Furthermore, I have concluded that it is possible for a child to be admitted to the school through the nursery criterion on grounds that would not comply with the Code and would be unlawful for admission to YR, but thereby gain the child greater priority for admission to the school over other children. For these reasons, and there being no appeal against the refusal of a place at the nursery, I have concluded that giving priority for admission to YR to children attending the nursery is not fair and does not comply with paragraphs 14 and 1.8 of the Code.
79. There are a number of other matters in the arrangements which do not comply with the Code for the reasons set out above. They are:

- aspects of the arrangements are not sufficiently clear as required by paragraph 14 of the Code;
- the school does not give highest priority to looked after and previously looked after children as required by paragraph 1.7 of the Code;
- the faith-based oversubscription criteria have not been constructed with regard to guidance from, or after consultation with, the body representing the religion as required by paragraph 1.38 of the Code;
- the oversubscription criteria include consideration of parents' activities which paragraph 1.9i of the Code says are only permissible if they are as laid out by the religious authority for the school. It has not been demonstrated that this is the case and so the requirements of paragraph 1.9i to enable the school to include any activities have not been met;
- it is not clear how the faith-based criteria can be met as required by paragraph 1.37 of the Code and these criteria are not clear and objective as required by paragraph 1.8 of the Code; and
- the SIF does not meet the requirements of paragraph 2.4 of the Code.

Determination

80. I have considered the arrangements determined by the governing body of Menorah Foundation School for September 2015 in accordance with section 88I(5) of the School Standards and Framework Act 1998. I determine that they do not conform with the requirements relating to admission arrangements.

81. 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: 11 November 2014

Signed:

Schools Adjudicator: Phil Whiffing