



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2777

Objector: The Fair Admissions Campaign

Admission Authority: The governing body of Yesodey Hatorah Senior Girls School

Date of decision: 8 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 for 2015 determined by the governing body of Yesodey Hatorah Senior Girls School in the London Borough of Hackney.

I have also considered the arrangements in accordance with section 88I(5). 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. 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 Yesodey Hatorah Senior Girls School (the school), a voluntary aided (VA) school with a Jewish religious character for girls aged 11 – 16 for September 2015. The objection is to: aspects of the faith-based oversubscription criteria used by the school; a number of matters relating to the school's supplementary information form (SIF); and the random allocation procedures used in the arrangements.

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 the objection to these determined arrangements on 30 June 2014. 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. I have also used my power under section 88I of the Act to consider 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:
 - a. the objector's email of objection and subsequent correspondence;
 - b. the school's response to the objection, supporting documents and subsequent correspondence;
 - c. the response of the Hackney Learning Trust, which is the local authority (LA) for the area, to the objection and subsequent correspondence;
 - d. the response of the Union of Orthodox Hebrew Congregations (UOHC), which is the school's religious authority, to the objection and the guidance issued by the religious authority to the school;
 - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 - h. a copy of the determined arrangements.
5. I have also taken account of information received during and subsequent to a meeting I convened on 16 September at the school which was attended by representatives of the school, the LA and the objector. The religious authority was invited but chose not to attend.

The Objection

6. The objector made the following arguments in the objection of 30 June 2014:
 - a. the statement in the arrangements that *"all pupils will need to abide by the principles and ethics of the Charedi community as guided by the Rabbinate of the Union of Orthodox Hebrew Congregations"* breaches a number of provisions of the Code; namely, paragraph 1.9a which prohibits placing any conditions

on the consideration of applications other than those in the oversubscription criteria; and the provisions of paragraph 1.6, 1.36 and 2.8 which together provide that all applicants who want a place at a school – including a school with a religious character - must be admitted without condition if the school is not oversubscribed;

- b. the statement *“Charedi homes do not have TV or other inappropriate media and parents will ensure that their children will not have access to the internet and any other media which do not meet the stringent moral criteria of the Charedi community. Families will also dress at all times in accordance with the strictest standards of Tznius (modesty) as laid down by the Rabbinat of the Union of Orthodox Hebrew congregations”* was not compliant with the Code. In the objection, the objector did not state what provision or provisions of the Code the statement was thought to breach.
- c. the method used for random allocation was not specified and therefore breaches paragraph 1.34 of the Code;
- d. both parents were asked to sign the SIF in breach of paragraph 2.4e of the Code;
- e. the SIF asked for the name of the primary school attended in breach of paragraph 2.4 of the Code;
- f. the SIF breached 1.9a of the Code by stating that *“Fathers, where applicable, overall mode of dress style and colour will be in accordance with the Charedi ethos of the school; must belong to a Charedi synagogue and attend all prayers on Sabbos, Yom Tov and the three daily prayers. Likewise attendance in synagogue appropriately dressed, ie jacket and hat. Set times for daily Torah study sessions are an essential part of a Charedi family environment.”* The objector adds that the SIF *“specifies lots of requirements with request to dress and media which are similarly not in the oversubscription criteria”*.

Other Matters

- 7. When I reviewed the arrangements, I considered that there might be other ways in which the arrangements did not comply with the requirements relating to admissions. Some of these matters were also identified by the objector in correspondence submitted after the initial objection and thus after the deadline for objections which for admissions in 2015 was 30 June 2014. I have considered all of these matters under section 88I of the Act as matters which have come to my attention. They are:
 - a. different and contradictory versions of the arrangements are published in different places which might render the arrangements unclear in contravention of paragraphs 14 and 1.8

of the Code. This includes, in particular, the fact that some versions include the use of random allocation as a final tiebreaker and some do not;

- b. the arrangements for 2014 and 2015 appeared not to have been published as required by paragraph 1.47 of the Code;
- c. the definition of looked after and previously looked after children used in the arrangements seemed not to conform with paragraph 1.7 of the Code;
- d. the oversubscription criteria distinguish between “*Charedi Jewish girls who meet the Charedi criteria as prescribed by the Rabbinate of the Union of Orthodox Hebrew Congregations*” and “*Other Charedi Jewish girls*” but there is no definition of the latter group which could make the arrangements not clear and thus not in conformity with paragraphs 1.4 and 1.8 of the Code;
- e. the definition of Charedi in the admissions policy is shorter and less detailed than that in the SIF which could make the arrangements unclear in contravention of paragraphs 1.4 and 1.8 of Code and would also mean that they could breach paragraph 1.37 which requires that parents should be able to understand easily how any faith-based criteria will be reasonably satisfied;
- f. taking account for the purposes of admissions of some of the requirements specified as part of the Charedi lifestyle requirements might breach paragraph 1.9i which prohibits taking account of children or parents’ activities with the exception of religious activities which have been laid out by the religious authority;
- g. the SIF contained a statement “*I/We understand that if at any time I/we do not conform to the standard set by the Rabbinate, this endorsement will be rescinded*” which could imply that an offer of a place or an actual place at the school might be removed in breach of paragraphs 2.12 and 2.13 of the Code;
- h. the arrangements required girls to sign the SIF which could be in contravention of paragraph 2.4e of the Code.

Background

- 8. The school opened as a VA school in September 2005 replacing an independent school. The school and its predecessor were established by the Orthodox Charedi Jewish community in Hackney. The school has a published admission number (PAN) of 80. The school and LA confirm that the school has been oversubscribed since joining the publicly funded sector only once (for admission in September 2010) and does not usually have to apply its oversubscription criteria. The LA confirms that, except for the year in which it was over oversubscribed, the school has always admitted all who applied for a place in Y7.

9. The arrangements for 2015 were determined by the governing body at its meeting on 29 October 2013. Paragraph 1.47 of the Code states that once arrangements have been determined they must be published on the school's website. The Code explains in footnote 14 that if a school does not have a website, it will have to take suitable alternative action. Yesodey Hatorah does not have a website and uses the website of the National Association of Jewish Orthodox Schools (NAJOS) for the purpose of publishing its admission arrangements. The arrangements are also published on the LA's website.
10. I wish to make a point about spelling. In the various documents provided to me by the school and the UOHC the spellings "Chareidi" and "Charedi" have been used interchangeably – sometimes, both have appeared in the same document. I am conscious that translations from other languages (in this case Hebrew) are not always standardised. I have used "Charedi" throughout this determination as that is the spelling I saw used most frequently.
11. Before I consider the objection and the other matters which were referred to me or which I considered might not conform with the Code, I should note that the school has, since the meeting I held, provided me via its solicitors with proposed new arrangements including a new SIF. I have where appropriate referred in this determination to these proposed new arrangements. In the letter accompanying the new arrangements the school's solicitors said that – given that the school was not expected to be oversubscribed for 2015 – the school considered that the changes could be implemented for 2015 although *"it awaited any views of the adjudicator regarding that"*. My jurisdiction under the Act allows me to uphold, not uphold or partially uphold objections and to determine whether – in respect of arrangements that come to my attention – the arrangements conform or do not conform with the requirements relating to admissions and, if not, in what ways they do not. My determination is binding on the school but it is not for me to set a date by which the school must amend its arrangements. The Code provides that the arrangements must be revised ***"as quickly as possible, but no later than 15 April following the determination."***

Consideration of Factors

Publication and clarity of the arrangements

12. When I first sought to review the school's arrangements, I found a number of different versions in different places. Some of these were dated and some were not; some included the use of random allocation in order to separate two applicants who qualified equally for the final available place and some did not. Some versions stated that the PAN was 60, others 80 and one 90. The only published version of the arrangements I could find which stated that these were the determined arrangements for 2015 was that hosted on the LA's website. This was different from both of the two versions I found on the NAJOS website one of which stated that it related to admissions in September 2012 and which I did not therefore consider further. The other version was

undated, had a PAN of 90 and was different from the version on the LA's website for example, by including an element of priority for girls who had attended Yesodey Hatorah Primary School which is not included in the version on the LA website. I was also provided by the school via its lawyers on 26 August with a version of the arrangements dated 2015. However, this version stated that the waiting list would be "*maintained until 31 December 2014*" (my underlining) which clearly could not be right for arrangements governing admissions from September 2015. In short, it has proved challenging and time consuming to establish what the arrangements for this school actually are. The school's SIF was published on the NAJOS website. Where different and especially, as in this case, directly contradictory versions of arrangements are published, this can only be unhelpful to parents. Paragraph 14 of the Code which provides that arrangements **must** be fair, clear and objective, also says that "*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*" Where it is not possible to be certain what the arrangements for a given year actually are, the arrangements are by definition not clear as required by paragraphs 14 and 1.8 of the Code.

13. When I reviewed the NAJOS website, I could not find any reference to the admission arrangements for the school for admission in 2014. Paragraph 1.47 of the Code requires that admission arrangements are published for the whole of the offer year. Paragraph 2.14 of the Code requires that "*Each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria*". The combined effect of these requirements in this case is that I would have expected to be able to view the arrangements for 2014 as well as 2015 for the school on the NAJOS website until the end of December 2014.
14. At the meeting, the school accepted that it had not met the requirements relating to publication of arrangements for 2014 or 2015. I determine that the school has not published its arrangements for 2014 or 2015 in accordance with paragraphs 1.47 and 2.14 of the Code and that the arrangements are not clear as required by paragraphs 14 and 1.8 of the Code. The Code requires the school to rectify this as soon as possible.
15. Finally in relation to the clarity of the arrangements, the LA has helpfully pointed out that the arrangements (including the proposed arrangements submitted after the meeting) refer to applicants needing to apply for places by using the "Learning Trust's application form." This will not always be the case. As paragraph 2.1 of the Code explains, applications are made via the common application form (CAF) of the applicant's home LA. For those living in the London Borough of Hackney, this will be the Learning Trust, but any applicant living outside the borough will apply via her home LA. The arrangements are in this case a little misleading and thus unclear. This breach of the Code can

be easily remedied and the school is required to revise the arrangements as soon as it is possible to do so.

The published admission number

16. The arrangements refer to “*admitting up to 80 girls to each year group from Year 7 to Year 11 inclusive*”. The school only admits regularly into Y7. As drafted the arrangements could be taken to suggest that further pupils were each year admitted into years 8 to 11. This makes the arrangements unclear in breach of paragraphs 14 and 1.8. The proposed arrangements simply say that the school will admit up to 80 girls in Year 7 which is much clearer. The current arrangements do not conform with the requirements relating to admissions and the Code requires the school to amend its arrangements as quickly as possible.

The use of random allocation as a final tiebreaker

17. The objector noted that the arrangements provided for the use of random allocation as a final tiebreaker to distinguish between two final applications which could not otherwise be separated but did not meet the requirements in paragraphs 1.34 of the Code to set out how this would operate. The school agreed that it needed to make this clear and the proposed revised arrangements state that random allocation will be carried out under independent supervision. I uphold this aspect of the objection and note that the school has undertaken to vary its arrangements to conform with the Code.

Priority for looked after and previously looked after children

18. The school gives the necessary priority to looked after and previously looked after girls as required by paragraphs 1.7 and 1.37 of the Code. However, the definition of looked after and previously looked after children used in one section of the arrangements is not accurate. The arrangements refer to “*looked after or previously looked after children in public care*”. Looked after children include not only those who are in public care but also those who are provided with accommodation by a local authority in the exercise of its social services functions. Similarly, previously looked after children include those previously provided with accommodation in the same way. The arrangements do not in this regard conform with the Code and the Code requires to the school to amend its arrangements as quickly as possible.

Faith-based oversubscription criteria

19. The school is designated under section 69 of the Act as a school with a religious character and is therefore permitted by virtue of paragraph 1.37 of the Code to use faith-based oversubscription criteria to give priority to applicants on the basis of faith. The school is also required by paragraph 1.38 of the Code to have regard to any guidance issued by its religious authority in determining such criteria. I had asked for copies of any such guidance before the meeting but none had been provided. At the meeting the school told me that there was guidance

but that it was not written down. The Code does not say that any such guidance must be written. However, where it is not written down it is challenging to test whether a school has had regard to the guidance. Written guidance has now been produced and a copy provided to me.

20. The arrangements as published on the LA's website and on the NAJOS website included a statement that "*All pupils will need to abide by the principles and ethics of the Charedi community as guided by the Rabbinate of the Union of Orthodox Hebrew Congregations*". The objector argued that this meant that the arrangements breached a number of provisions in the Code. These were:

- a. paragraph 1.36 of the Code which requires that "*these schools [those with a religious character] are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available.*"
- b. paragraph 15d of the Code which states that "*If a school is undersubscribed, any parent that applies **must** be offered a place.*"
- c. paragraph 1.9a of the Code which states that admission authorities "***must not** place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements.*"
- d. paragraph 2.8 of the Code which states that "*With the exception of designated grammar schools, all maintained schools, including faith schools, that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria.*"

21. In correspondence before the meeting and at the meeting, the school acknowledged that its statement did not conform with the Code as it suggested that only pupils who did abide by the principles and ethics of the Charedi community would be admitted to the school. Families who are not Charedi have a right to apply for a place at the school for their daughter if they wish to do so and if a place is available it must be offered. The issue of how families who are Charedi conduct their lives is a matter for them and their religious leaders. However, where a school with a religious character has admitted children not of the faith, as it is required to do if the places are sought and are available, the school cannot impose requirements on how the families of such children conduct their lives as a condition of admission to the school. The arrangements as drafted could reasonably be considered to mean that only pupils who are Charedi will be admitted which is a breach of paragraphs 15d, 1.36 and 2.8. Alternatively, they could be understood to mean that all those admitted (whether or not Charedi) need to abide by the principles and ethics of the Charedi community which is a breach of paragraph 1.9a of the Code as it suggests that this is a condition of admission to the school. I accordingly uphold this aspect of

the objection and the school must revise its arrangements as quickly as possible. The school accepted that the arrangements needed to be changed in order to comply with the Code. The proposed new arrangements are much clearer in terms of explaining that the religious criteria relate only to those seeking priority on the basis of being Charedi. It is for the school to make the changes required as a result of this determination; however, I note that there are sections of the proposed arrangements which are less clear in distinguishing between what is required of any pupil at the school and what is required to gain priority for admission on the basis of being Charedi. The LA has in this context commented that while the proposed arrangements do allow girls who are not Charedi to attend the school, the use of the wording “which exists” in the sentence “*Yesodey Hatorah is a school with a religious designation which exists to meet the needs of Charedi Jewish familie.*” might give the opposite impression.

22. The objector also questioned whether the statement in the arrangements about dress code and TV and internet in the home was compliant with the Code, saying: “*dictating a dress code and a lack of TV/internet are, as far as we are aware, unique for a school’s admission arrangements.*” I note that the objector did not cite any provisions of the Code in relation to this matter. The school argued that these provisions did not dictate a dress code or access to TV and internet but “*defined religiously the conditions that must be met in order to gain priority status*”. The objector then questioned whether dressing in a certain way and/or not having a TV or internet could be considered to be religious activities. Paragraph 1.9i of the Code prohibits giving priority on the basis of children or parents’ past or current hobbies or activities with the exception, in the case of schools with a religious character, of religious activities “*laid out by the body or person representing the religion or religious denomination*”. I consider that dressing in a certain way and/or not having a television can be considered to fall within the ambit of being activities in the sense used in the Code. Within that context, it is not for the adjudicator to decide what is or is not a religious activity for a particular faith; although it is for the adjudicator to assess whether oversubscription criteria based on any such activities conform with the Code. The guidance which has now been provided by the UOHC makes clear that the dress code and not having a TV or internet in the home are religious requirements for a Charedi family. I do not uphold this aspect of the objection. However, as noted above, it is important that the arrangements distinguish between what is necessary to gain priority for admissions and any perception of the imposition of conditions. It is not permitted to include anything in arrangements that suggest that conditions will be imposed on the admission of children to a school if that school has places available. The only exception to this requirement applies to grammar schools and Yesodey Hatorah is not a grammar school.

23. When I reviewed the arrangements, I noted that they gave different degrees of priority to Charedi girls who meet the Charedi criteria “*as prescribed by the Rabbinate of the Union of Orthodox Hebrew*

Congregations” and to “*Other Charedi Jewish girls*” with a higher priority given to the former than to the latter. In addition, where priority is given to other groups such as Charedi Jewish girls with sisters at the school, no indication is given as to whether this means those who do or do not meet the criteria prescribed by the UOHC or both. While the objector did not raise this issue in the objection, it was referred to in the objector’s later correspondence. In that correspondence the objector noted that the admissions policy contained a definition of Charedi but that this was different and, the objector considered, less stringent than a longer definition under the heading “*Union of Orthodox Hebrew Congregation Charedi Ethos and Rules*”. The objector linked this to the different degrees of priority outlined above suggesting that perhaps the shorter definition might be the test for the lesser degree of priority. At the meeting, the school was clear that a girl either would or would not be Charedi and there seemed to be no reason for the different definitions. I note that the proposed arrangements do not make any such distinction. The current arrangements which are the subject of this determination are not clear as required by paragraphs 14 and 1.8 of the Code as there is no way to tell whether someone would or would meet the criterion “*Other Charedi girls*” and the Code requires the school to revise the arrangements as quickly as possible.

Matters relating to the SIF

24. The SIF is part of the admission arrangements and must conform with the relevant requirements relating to admissions. The objector noted that the SIF included requirements about lifestyle and religious practice which were not included in other parts of the arrangements. When I reviewed the arrangements I concluded that there were differences. I consider that this could make it hard for families to be certain whether their lifestyle and practice would meet the requirements to gain priority for their daughters for the school. I consider that the arrangements in this regard do not conform with paragraph 1.37 of the Code which requires that admission authorities “***must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied***”. I uphold this part of the objection and I note that the proposed arrangements and SIF have a consistent definition throughout.
25. When I reviewed the SIF, I noted that it included a statement immediately above the space for a parent or guardian to sign which said “*I/We understand that if at any time I/we do not conform to the standard set by the Rabbinate this endorsement will be rescinded.*” I was concerned that this could imply that a place might be removed perhaps even after a girl had started to attend the school. The circumstances in which offers of places can be withdrawn once offered are set out in paragraphs 2.12 and 2.13 of the Code and do not include where parents change their religious practice. The SIF does not conform with the Code and the Code requires the school to amend the SIF as quickly as possible. I note that the proposed SIF does not include this provision.

26. The SIF required a signature from the girl for whom a place was sought. Paragraph 2.4 of the Code prohibits requesting the child to complete the form as well as stating that the SIF can only be used to seek additional information necessary to apply the school's oversubscription criteria. Whilst requiring an applicant to sign the SIF is not exactly the same as requiring them to complete the SIF, it is part of completing the form. In addition, there is no need for a girl's signature in order to apply the oversubscription criteria. I determine that the arrangements do not in this regard conform to the Code and the school must revise the arrangements as quickly as possible. I note that the proposed SIF does not provide for a signature from the girl.
27. The objector noted that both parents were asked to sign the SIF. Paragraph 2.4 of the Code states that admission authorities "**must not ...ask both parents to sign the form...**". The main body of SIF itself only requires one signature, although it does provide for two signatures by referring throughout to "*I/We*" and "*Parent(s)*". In addition, the Confirmation of Charedi Status form provides spaces for the signature of both *Father/Guardian* and *Mother/Guardian*. I consider this form to be part of the SIF and therefore the Code applies to it as its sole purpose is to confirm whether a girl qualifies for priority for admission to the school on the basis of faith. The school has accepted in correspondence that it cannot insist on both parents signing the SIF. I consider that the arrangements breach paragraph 2.4 of the Code by appearing to require two signatures on the Confirmation of Charedi Status form. I also determine that by referring only to parents in this section and not also to guardians the arrangements could lead some readers to think that they cannot apply as a guardian of a child. I further consider that by providing for two signatures on the main body of the SIF, some parents or guardians may feel that they will have a higher priority if they can provide two signatures and I consider that this is unfair. I uphold this part of the objection and the school must revise its arrangements as quickly as possible. I note that the proposed SIF states that only one parent is required to sign in one place but continues to provide for two parents or guardians to sign the Confirmation of Charedi Status declaration on the form.
28. The SIF asks for the name of the primary school attended. As noted above, the SIF can only be used to seek additional information necessary to apply oversubscription criteria. The oversubscription criteria do not give any priority on the basis of attendance at a particular named feeder primary school and there is thus no reason for this to be covered on the SIF. I uphold this aspect of the objection. The Code requires the school to amend its arrangements as quickly as possible and I note that the proposed new SIF does not ask for this information.

Conclusion

29. As set out in this determination, I have found that the arrangements for this school do not conform in a significant number of ways with the requirements relating to admissions. The fact that the school is not usually oversubscribed does not relieve it of the duty to have Code compliant arrangements.

Determination

30. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for 2015 determined by the governing body of Yesodey Hatorah Senior Girls School in the London Borough of Hackney.

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

32. 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: 8 December 2014

Signed:

Schools Adjudicator: Shan Scott