



DETERMINATION

Case reference:	ADA2881
Objector:	A member of the public
Admission Authority:	The academy trust for Etz Chaim Jewish Primary School, Barnet, London
Date of decision:	18 August 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for Etz Chaim Jewish Primary School, Barnet, London for September 2016.

I have also considered the arrangements for 2016 in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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 within two months of the date of this determination.

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 member of the public about the admission arrangements (the arrangements) for Etz Chaim Jewish Primary School (the school), an academy free school for pupils aged four to eleven, in the London Borough of Barnet for September 2016. The objection is to a number of the school's oversubscription criteria, to provisions in the arrangements relating to late applications and its waiting list and to the requirement to submit a birth certificate with the application.

Jurisdiction

2. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis on 24 March 2015. The objector submitted the objection to these determined arrangements on 25 May 2015. The

objector has asked for his or her identity not to be disclosed and has satisfied the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations (the Regulations) by providing both name and address to me. 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 form of objection dated 6 May 2015 and submitted to the Office of the Schools Adjudicator (OSA) on 25 May 2015;
 - b. the school's response to the objection dated 2 June 2015 and subsequent submissions and supporting documents;
 - c. the response of the Office of the Chief Rabbi (OCR), which is the school's faith body, dated 25 June 2015;
 - d. the composite prospectus for parents seeking admission to schools in the area in September 2015 published by the London Borough of Barnet, the local authority, (LA) for the area;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting on 24 March 2015 at which the academy trust determined the 2016 arrangements; and
 - g. a copy of the determined arrangements.
5. I have also taken account of information received during and subsequent to a meeting held at the school on 24 July 2015 which was attended by representatives of the school, the OCR and the LA.

The Objection

6. The objection covers a number of aspects of the arrangements. First, the oversubscription criteria give priority to a number of groups of children, including siblings of existing pupils, without reference to religion and then give priority for up to 50 per cent of places to children from practicing Orthodox Jewish families and then give priority for any remaining places on the basis of proximity to the school. The objector argues that the school's approach breaches the provision of footnote 28 to the Code which states that "*Funding Agreements for ... Free Schools with a religious character provide that where the school is oversubscribed at least 50% of places are to be allocated without*

reference to faith". Second, the arrangements give priority to children of staff only if they meet the school's faith-based oversubscription criterion which the objector considers breaches the Equality Act 2010 (the Equality Act). Third, the objector considers that other aspects of the arrangements breach the Code; namely: the statement that late applications "*will not be considered*"; the requirement to satisfy the school's faith-based oversubscription criteria in order to be included on the school's waiting list and the requirement to submit a copy of the child's birth certificate when applying for a place at the school.

Other Matters

7. When I reviewed the arrangements, I considered that there were ways in which they might not conform with the requirements relating to admissions. I accordingly used my powers under section 88I of the Act to consider the arrangements as a whole. The matters which I considered might not conform with the Code and which I raised with the school at the meeting on 23 July 2015 were:
 - a. priority for children of members of UK armed forces appeared to have been introduced in breach of paragraph 1.9f of the Code;
 - b. the arrangements asked all applicants to complete the supplementary information form (SIF) even if this was not necessary for their particular application and the SIF asked for information which was not either not necessary to apply the oversubscription criteria or was specifically prohibited by the Code. The arrangements thus appeared to contravene paragraphs 2.4 and 2.5 of the Code;
 - c. aspects of the arrangements seemed contradictory and hence unclear in contravention of the paragraphs 1.4 and 1.8 of the Code.
 - d. the definition of looked after and previously looked after children used in the arrangements appeared not to conform with the definition in paragraph 1.7 of the Code;
 - e. the arrangements did not state that children with an Education, Health and Care (EHC) which named the school would be admitted and thus appeared to breach paragraph 1.6 of the Code; and
 - f. the arrangements appeared to lack a final tie-break capable of separating two applicants who qualified equally for the final available place and thus did not meet the requirements of paragraph 1.8 of the Code.

Background

8. The school opened in September 2012. It is designated as a school with an Orthodox Jewish religious character under section 69 of the Act. It has a published admission number (PAN) of 28 for Reception. The school is usually oversubscribed and so has to apply its oversubscription criteria. The school's arrangements for 2016 including the SIF and Certificate of Religious Practice (CRP) are easy to find on its website. The oversubscription criteria for September 2016 can be summarised as follows:
- (i) Looked after and previously looked after children
 - (ii) Children of members of the UK armed forces
 - (iii) Siblings of those already at the school
 - (iv) Children of staff employed by the school for two years and who meet the school's religious criteria
 - (v) Children who meet the school's religious criteria (up to 50 percent of all places)
 - (vi) Any remaining places on the basis of distance from the school.
9. Oversubscription categories (ii), children of members of UK armed forces, and (iv), children of staff, were first introduced for admissions in September 2015. I have been informed that the school carried out the consultation required by the Regulations and paragraphs 1.42 to 1.45 of the Code before making these changes. No further changes were made to the arrangements for 2016 and the academy trust determined the arrangements for 2016 on 24 March 2015.

Consideration of Factors and Other Matters

10. Before turning to the issues raised in the objection and the other matters, I note that the school responded quickly to the objection and proposed a number of changes to its arrangements in order to bring them into conformity with the Code. Subsequent to the meeting with the school, it has provided the Office of the Schools Adjudicator (OSA) with a set of proposed arrangements which it intends to use for admissions in 2016. I refer to these proposed arrangements below where appropriate to do so.

The school's faith-based criteria

11. First, I consider the aspect of the objection relating to the requirement in the school's funding agreement that *"if oversubscribed at least 50% of places available each year will be allocated without reference to any faith-based oversubscription criteria."* The objector considered that in order to meet this requirement the school needs, in effect, to split its total number of places into two and as the objection put it allocate them to: *"faith and non-faith applicants concurrently, on a pro-rata basis. Otherwise, the school will soon be allocating half the places to siblings of existing pupils then all the remaining places to faith applicants and it will rapidly become impossible for any new family to choose this school on any grounds other than faith."* The objector considers that any siblings of children who were admitted under the faith-based criteria

should themselves count towards the 50 per cent limit of places allocated on the basis of faith. The school gives priority to siblings of existing pupils irrespective of the criterion against which the older sibling was allocated a place. In doing so, it does not take account of their faith or faith practice. No faith-based test is being applied to children considered under the sibling category. The Code does not prohibit the approach taken by the school. It is for individual admission authorities to set their arrangements within the framework allowed by the Code. I consider that the school's arrangements conform with the requirements relating to admissions and I do not uphold this aspect of the objection.

12. At the meeting, I raised with the school the wording of oversubscription category (v) which referred to "up to 50% of places" as I was not sure if this was intended to mean all places remaining after the admission children with a statement of special educational needs (SEN) or Education, Health and Care (EHC) plan or up to 50% of 28 which is the school's PAN. I was concerned the arrangements might not be clear. The proposed arrangements submitted to me subsequent to the meeting, refer to "up to 14 places". I consider that this wording is clear as required by paragraphs 14 and 1.8 of the Code.
13. The objector argued that the restriction on the priority given to children of staff to those who satisfied the school's faith-based criteria breached an unspecified provision of the Equality Act relating to discrimination on the basis of religious belief. In fact, the Equality Act includes specific exemptions to the requirement not to discriminate on the basis of religion in order to allow schools with a religious character to give priority to children on the basis of faith. I do not consider that the school was in breach of the Equality Act and I do not uphold this aspect of the objection.
14. The objector also argued that the priority given to children of staff who met the school's faith-based criteria when combined with oversubscription category (v) might mean that priority for more than 50 per cent of all places was given with reference to faith. This is possible as such a child could be admitted in addition to the maximum of 50 per cent admitted under criterion (v) and I uphold this aspect of the objection.
15. I was also concerned that the wording used by the school might not conform with the Code as it referred to staff employed "by" the school (which would I consider mean employed by the academy trust which is the relevant corporate body) whereas the permission in the Code is to give priority to staff employed "at" the school in certain circumstances. It would be possible for an academy trust to employ staff who did not work at the school but at some other location. In response to the objection and my concerns the school has proposed to vary its arrangements to refer to staff "*employed at the school*" and to remove the restriction relating to its religious practice requirement.
16. The objector drew attention to the provision in the arrangements which

stated that: *“to be on the waiting list, the SIF and CRP, with 4 points must have been completed and returned ...”* Paragraph 2.14 of the Code requires each admission authority to maintain a waiting list until at least 31 December each year *“in line with the published oversubscription criteria.”* Admission authorities cannot place conditions on inclusion on the waiting list during the period up to 31 December in the way suggested in the arrangements as to do so would breach the requirement in paragraph 2.14 of the Code. The school’s arrangements breached this requirement and I uphold this aspect of the objection. The school has proposed to revise its arrangements to make clear that the waiting list will follow the published oversubscription criteria.

Other aspects of the arrangements

17. Priority for children of members of the UK armed forces: The school’s arrangements for 2015 introduced an element of priority for children of members of UK Armed Forces posted to the area. The Code in force at the time the arrangements for 2015 were determined allowed academies (including free schools) to give priority in their oversubscription criteria to children in receipt of the pupil premium if this was permitted by their funding agreement but did not mention children of members of the armed forces. In any case, the funding agreement for the school did not include any permission to give any such priority. The school was thus in breach of paragraph 1.9f of the Code then in force which prohibited the giving of priority to children on the basis of parental occupation. Paragraphs 1.9f and 1.39A of the Code now in force does allow for priority to be given to children entitled to the service premium. However, the Department for Education advice: *“Using the Pupil Premium, Service Premium or Early Years Premium in admission arrangements”* makes clear that schools wanting to give such priority must *“consult on and determine the revised arrangements in the normal way, as required by the .. Code”* and states that: *“This change can be first introduced for schools’ intake in September 2016.”* Recognising that by administrative error it had included in its arrangements a provision which was not allowed at the time of its introduction, the school has proposed to vary its arrangements for 2016 to remove the provision.
18. Late applications: The objector noted that the school’s arrangements said that late applications would not be considered. Paragraphs 15d, 1.36 and 2.8 of the Code all make clear that, during the normal admissions round, a school **must** offer a place if one is available to any child who seeks one. This requirement applies to schools with a religious character such as Etz Chaim and the only schools to which it does not apply are grammar schools. The Code does not limit this requirement to children whose applications are made on time. By stating that late applications would not be considered the school is in breach of the Code and I uphold this aspect of the objection. The proposed arrangements do not include the statement that late applications would not be considered but explain that such applications

will be considered in line with the LA's co-ordinated admissions scheme.

19. Looked after and previously looked after children and those with statements of SEN and EHC plans: The school's arrangements when I first reviewed them did not reflect the requirements of the Code in relation to the definitions of looked after and previously looked after children which are set out in paragraph 1.7 of the Code. The arrangements did not refer to children with an EHC plan as well as children with a statement of SEN and hence did not meet the requirements of the definition in paragraph 1.6 of the Code which require that all such children whose statement of SEN or EHC plan names the school **must** be admitted. The school in its response to the objection proposed to vary its arrangements in order to bring them into conformity with the Code in this regard.
20. A final tie-breaker: The arrangements provided that that if the school reached and exceeded its PAN in any particular oversubscription category, priority would be based on proximity to the school. The arrangements did not include a final tie-breaker to cater for the circumstance in which two or more applicants lived the same distance from the school. The proposed arrangements provide that random allocation, independently supervised, will be used as a final tie-breaker.
21. Matters relating to the SIF and applications to the school: In order to apply some of its oversubscription criteria, the school requires information not provided on the LA's common application form (CAF). It is permitted by virtue of paragraph 2.4 of the Code to use a SIF for this purpose but "**must only**" do so to "*request additional information when it has a direct bearing on decisions about oversubscription criteria*". In addition, paragraph 2.4a says that SIFs cannot ask for "*personal details about parents or families*". The school's SIF when I first saw it asked for details of younger siblings. This request breached 2.4a by asking for personal details of families and the wider prohibition on asking for information which does not have a direct bearing on oversubscription criteria.
22. The arrangements stated that: "*In order to make an application to the School you will need to complete the documents below...[followed by a list which included the SIF, proof of address, a copy of the child's birth certificate]*" In fact, to make an application to the school a parent need only complete the CAF for their LA area. The SIF is required only for those seeking priority under some but not all of the oversubscription criteria and by asking for it in other circumstances, the school was in breach of paragraph 2.4 of the Code. The school does not need to ask for proof of address as the LA deals with this as part of its co-ordinated admissions scheme. Paragraph 2.5 of the Code provides that admission authorities may ask for proof of birth date, but only after a place has been offered. By asking for this information the school at the time of application the school was in breach of paragraph 2.5 of the Code. The CRP itself said that it had to be submitted by 23 October

2015, whereas the arrangements said that it had to be submitted by 15 January 2016. This made the arrangements unclear in breach of paragraphs 14 and 1.8 of the Code. The proposed admission arrangements address all of these matters.

Conclusion

23. I have partially upheld the objection. I have upheld the aspects which concerned the limitation on the priority given to children of staff to those who met the school's test of religious practice; the statement that late applications will not be considered and the requirement to meet the test of religious practice to be included on the waiting list. I have not upheld the aspects of the objection relating to the treatment of siblings in the oversubscription criteria. I have also found that the arrangements breached the requirements relating to admissions as set out in this determination.

24. As noted above, the school has proposed a number of variations to its arrangements in order to address the matters where I have determined that the arrangements did not conform with the requirements relating to admissions. It must now act to give effect to those proposals.

Determination

25. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for Etz Chaim Jewish Primary School, Barnet, London for September 2016.

26. I have also considered the arrangements for 2016 in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

27. 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 within two months of the date of this determination.

Dated: 18 August 2015

Signed:

Schools Adjudicator: Ms Shan Scott