



## Determination

<b>Case reference:</b>	<b>ADA3505</b>
<b>Objector:</b>	<b>A member of the public</b>
<b>Admission authority:</b>	<b>The governing board for Menorah High School for Girls, Barnet</b>
<b>Date of decision:</b>	<b>30 August 2019</b>

### 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 September 2020 determined by the governing board for Menorah High School for Girls, Barnet.**

**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 the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2020.**

### 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 an individual (the objector), about the admission arrangements (the arrangements) for Menorah High School for Girls (the school), a voluntary aided school with a Jewish religious character for girls aged 11 to 18, for September 2020. The objection is to aspects of the faith-based oversubscription criteria in the arrangements.
2. The school is located within the boundary of the London Borough of Brent, but the local authority it is maintained by is the London Borough of Barnet. Brent Council elected not to be a party to this objection; Barnet Council is a party. Other parties to the objection

are the objector, the governing board of the school and the Gateshead Community Rabbi, who is the religious authority for the school.

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school, on 14 May 2019. The objector submitted her objection on 13 March 2019. The content of the objection related to the arrangements for admission in September 2019, which were the latest set of arrangements available at that time. Notwithstanding the admission authority's failure to determine its arrangements for 2020 by the required date of 28 February 2019 and the fact that the objection was submitted before the arrangements were determined, I am satisfied in the circumstances that the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. In satisfying myself on this point, I have taken account of the facts that the arrangements that were subsequently determined for admission in September 2020 are identical to those for admission in September 2019 and that the deadline for objections to the 2020 arrangements was 15 May 2019 and the objection was made before that deadline. One matter raised by the objection that was not within my jurisdiction, as it related to the application of the arrangements rather than the arrangements themselves, is addressed later in this determination.

4. The objector has asked to have her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me.

## Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements, which include the Supplementary Information Form (the SIF);
- c. the objector's form of objection dated 13 March 2019 and supporting documents;
- d. the school's response to the objection and supporting documents; and
- e. the Gateshead Community Rabbi's guidance to the school on the arrangements.

## The Objection

7. The objection is lengthy. In summary, the objector believes that the arrangements do not comply with the requirements relating to admissions in the following ways (with the relevant paragraphs of the Code in brackets):

- the faith-based oversubscription criteria are not reasonable, clear, objective and procedurally fair (1.8);
- parents cannot easily understand how the faith-based criteria will be reasonably satisfied (1.37);
- the SIF requests information that does not have a direct bearing on decisions about the school's oversubscription criteria, including the previous school attended by the applicant and the parent's synagogue membership (2.4);
- the procedures used to decide the allocation of places, particularly the role of the Rabbinical Admissions Advisory Committee, are not fair, clear and objective (14);
- there is no evidence that the admission authority has received guidance from, or consulted with, the school's religious authority or that the body or person representing the religion of the school has laid out the religious activities that may be taken into account (1.38 and 1.9 (i));
- the process of random allocation does not appear to be supervised by someone independent of the school and a fresh round of random allocation does not appear to take place each time a child is to be offered a place from the waiting list (1.35); and
- the timetable for admission appeals was not published on the school's website by 28 February, as required by section 2.2 of the School Admission Appeals Code.

## Background

8. The school is a small secondary school and its Published Admission Number (PAN) is 60. It was first opened as an independent school in 2001. Essentially, that school moved into the publicly funded system by the mechanism of the closure of the independent school and the establishment of a voluntary aided school in April 2016. Staff and students from the independent school transferred to the new voluntary aided school. The school is heavily oversubscribed. Parents of 126 girls submitted an on-time application making the school a preference for admission in September 2019, 113 of whom made it their first preference.

9. The oversubscription criteria for admission in September 2020 were determined by the governing board on 14 May 2019. They are unchanged from the arrangements for admission in September 2019 and can be summarised as follows:

- a) Charedi Jewish girls who are looked after or were previously looked after.
- b) Charedi Jewish girls with medical or social grounds for admission to the school.
- c) Charedi Jewish girls with sisters attending the school.
- d) Other Charedi Jewish girls.
- e) Other looked after or previously looked after girls.
- f) All other girls.

In the event of oversubscription within any criterion, priority for places is determined by random allocation.

10. The arrangements define “Charedi” as follows:

*“Charedi (strictly orthodox) Judaism is defined as a lifestyle and daily practice that are governed by an unequivocal and lifelong commitment to:*

- *Torah study*
- *Mitzvos observance - observance of Torah commandments*
- *The central tenets of Yiras Shomayim - behaving in private as one would do in public*
- *The central tenets of Emunas Chachomim - reverence of Rabbinic authority*
- *The central tenets of Middos Tovos - positive attributes as learned from the Torah*
- *The central tenets of Tzenius - modesty in dress, speech and behaviour.”*

11. The arrangements go on to define “a Charedi girl” in this way:

*“A Charedi girl must observe and practice [sic] orthodox Jewish traditions and practices as set out in 2.3.2 hereunder. With specific regard to tznus [sic] and internet access, the current school guidelines are stated in appendices A and B to this document respectively. In the event of any dispute as to whether a child meets these criteria, the decision will rest with the Rabbinical Admissions Advisory Committee of the Menorah High School for Girls Trust.”*

Paragraph 2.3.2 reads as follows:

*“A Charedi girl must also have a parent or parents or guardian(s) who:*

- a) *have a genuine desire for orthodox Jewish schooling of a Charedi nature;*

b) *observe the Sabbath and Holy Days, adhere to the dietary laws, engage in regular daily Torah study and maintain active participation in an orthodox synagogue. Such participation should include regular attendance at communal prayer services and might also include participation in synagogue affairs and events or other communal activities.*"

12. Appendix A to the arrangements consists of a set of "*Guidelines For Mode of Dress.*" Although entitled "*Guidelines,*" the arrangements make clear that these are "*the school's requirements in regard to mode of dress.*" Eight requirements are listed. The majority are specific, for example, "*Skirts must be long enough to cover the knee at all times, including when seated.*" The final requirement is more general,

*"clothing must not be tight or very brightly coloured but should instead add an air of dignity and finesse to the wearer."*

Appendix B is in two parts. The first is a list of "*Rules of Responsible Internet Use.*" The rules include the requirement that internet-connected computers are kept in a communal area of the home, that children should not have their own e-mail addresses and that access to certain applications is forbidden. The second part comprises rules about mobile phones. It is stated, for example, that "*Pupils in Years 7, 8 and 9 may not own their own phones*" and that,

*"Access to the internet must be disabled from all phones that belong to or are regularly used by our students."*

13. Applicants seeking to be prioritised on the grounds of Charedi Jewish faith are asked to complete a SIF, which also asks for the name of their previous school, their "*Synagogue Membership*" and the length of time they have been members. By completing the form, the parent confirms, "*I/We meet the Chareidi [sic] criteria as prescribed by the attached school policy.*" The arrangements explain that,

*"The school retains the right to request confirmation of the above from the Rabbi of the synagogue which the parents attend or from a Charedi Rabbi who is well acquainted with and knows the family."*

14. While I was considering this case, the school provided me with a proposed varied set of arrangements. I have referred to these as the "proposed arrangements". It is open to admission authorities to vary their determined arrangements in certain circumstances. However, the school indicated that it would not actually vary its arrangements before this determination is published. Therefore, the arrangements that are within my jurisdiction and which are accordingly the subject of this determination are the arrangements as determined on 14 May 2019. I have, nevertheless, referred to the proposed arrangements where I have considered it appropriate to do so.

## Consideration of Case

15. In order for an applicant to be prioritised under the faith-based criteria, her family must indicate that they “*observe and practice orthodox Jewish traditions and practices.*” As the objector points out, the Code makes clear that,

*“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 admission arrangements.”* (Paragraph 1.38).

Specifically, by way of exception to the general prohibition on prioritising children “*on the basis of their own or their parents’ past or current hobbies or activities*”, the Code states,

*“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.”* (Paragraph 1.9 (i)).

Menorah High School for Girls has a religious designation and the person representing the religion is the Gateshead Community Rabbi.

16. I have been provided with a copy of correspondence between the governing board of the school and the Gateshead Community Rabbi (who I shall refer to as “the rabbi” from now on), in which the school seeks guidance from the rabbi about changes to its arrangements that it is considering in response to the objection. I asked the school if the rabbi had, before the arrangements were determined, issued any guidance or laid out religious activities to be taken into account, which informed the determination of the arrangements for admission in September 2019 and 2020. The reply was that,

*“All previous advice received by the school from the Gateshead Rabbi was done verbally, and transferred directly into the Admissions Arrangements.”*

17. As stated above, paragraph 1.9 (i) of the Code requires that religious activities that are taken into account by admission authorities of schools designated with a religious character are “*laid out*” by the religious authority of the school. The meaning of the words “*laid out*” in paragraph 1.9 (i) were clarified in the High Court by Cobb J in a judgment about the London Oratory School (Governing Body of the London Oratory v The Schools Adjudicator [2015] EWHC 1012 (Admin)) (which I shall refer to as the Cobb judgment). The Cobb judgment held that,

*“the phrase “laid out” means specifically ‘laid out’ in schools admissions guidance published by the religious authority – i.e. ‘specifically provided for in or authorised by’ such guidance.”*

18. I have not been provided with any specific admissions guidance in writing issued by the rabbi to the school, apart from the comments he made on proposed changes to the arrangements that had been determined for admission in September 2020. The Cobb

judgment did not say that such guidance must be provided in a particular type of document but it does say that it is to be “*published by the religious authority*”. I infer from this that the guidance should be in written form or some other form such as a recording that can be referred to and cited. I infer also that it should be of sufficient clarity that the admission authority can have regard to it (as required by paragraph 1.38) and can identify specifically which religious activities it can take into account in its arrangements (as required by paragraph 1.9 (i)). The school says that the advice it received from the rabbi was given verbally and there is no record of it in any form that I can access. As a result, there is nothing published by the religious authority in the form of schools admissions guidance as required by the Cobb judgment from which the qualifying religious activities could be ascertained and I have not been provided with a record or minutes, for example, indicating what the advice was, other than what appears in the arrangements themselves. I do not consider that such advice to the school as there may have been from the rabbi, prior to the determination of its admission arrangements, either when the school first became voluntary aided in 2016 or more recently, satisfies the requirement of paragraph 1.9(i) that religious activities must be “*laid out*” in the way explained by Cobb J.

19. Therefore, I conclude that the admission arrangements do not comply with the Code as they prioritise children on the basis of their own or their parents’ activities, which have not been laid out as religious activities by the person representing the religion of the school. This means that any finding I might make that there are other ways in which the faith-based elements of the arrangements breach the Code would not materially add to my conclusion that they do not comply with the requirements relating to admissions. However, the governors have now sought guidance from the rabbi and this has been provided in written form. I recognise that, over the course of considering this matter, a substantial period of time has been spent discussing the faith-based oversubscription criteria and the governing board has proposed several amendments to them. I consider it is appropriate, therefore, to address all of the grounds of objection put forward by the objector, both those relating directly to the faith-based criteria and those relating to other matters, such as the procedures for random allocation.

#### *The faith-based oversubscription criteria*

20. The objector provides a detailed analysis of the faith-based admission requirements, covering each element of them. Her concern is to demonstrate “*the difficulties parents would have when determining whether they qualify as charedi Jews.*” I propose to consider these in turn, in the order that they appear in the objection.

21. First, the objector says that the requirement for **Torah study** is neither clear nor objective, as the arrangements do not specify how much time should be set aside for Torah study each day and whether one or both parents should engage in it.

22. I agree with the objector to the extent that, although it is clear that some Torah study is required, the absence of any further detail does not ensure that parents can easily understand how the requirement will be satisfied, as required by paragraph 1.37 of the Code. This aspect of the arrangements is therefore in breach of the Code. I note that the

written guidance received from the rabbi, in response to the school's queries following the receipt of the objection, states that the requirement is for men only and that, whilst an exact period of time is not specified, "*a fixed schedule should exist.*" The proposed arrangements clarify that Torah study is required of men, but make no other changes.

23. With respect to **Mitzvos observance** and **Yiras Shomayim**, that is, the observance of the Torah commandments and behaving in private as one would do in public, the objector refers to the determination of an adjudicator relating to Hasmonean High School (ADA2990). In this case, the adjudicator held that religious requirements that are observed privately within the own home cannot be objectively assessed by an outside party, such as a rabbi or a committee. Paragraph 14 of the Code requires the practices used to allocate places to be objective. The objector concludes,

*"Hence, it is not objective for the Committee to be asked to confirm that the family complies with Yiras Shomayim."*

She makes the same point with respect to some of the observance of Torah commandments, which she says "*are similarly performed in private (including the family purity laws).*"

24. Furthermore, the objector argues that the requirements relating to Mitzvos observance is not "*clear,*" as paragraph 1.8 says oversubscription criteria must be. Giving an example concerning dietary laws, she says,

*"Observance of Torah commandments is a very complex area and many laws have multiple possible interpretations within Orthodox communities."*

She says that the arrangements provide "*insufficient guidance*" and that "*families are just left to judge what compliance might look like.*"

25. I agree with the objector that the determined arrangements do not comply with the Code for the reasons she gives. In response, the school has proposed to alter its arrangements, with the approval of the rabbi, so that parents certify themselves that they meet the religious requirements that cannot be observed in public. Rabbinical confirmation would be required only for public religious observance, although the family's rabbi would have the option to indicate if there was clear evidence that the private elements of observance were not being met. As this proposed change to the school's admission arrangements has not been determined by the governing board by way of a variation, following the procedure set out in paragraph 3.6 of the Code, I am not required to make a definitive finding as to its compliance with the requirements relating to admissions. However, it does appear to me that self-certification by the applicant could meet the test of objectivity, provided that the religious practice requirements are clear. In this respect, the school has followed the guidance of the rabbi by adding to the arrangements the stipulation that religious practice should be "*in accordance with the Code of Law known as the Shulchan Aruch and its commentaries.*" The rabbi's guidance states,



*“Whilst many commentaries and interpretations have been written they have tended to explore newer applications of Jewish Law. The basics as written in the Shulchan Aruch are overwhelmingly agreed by all chareidi Jewish authorities and these therefore form the basis of chareidi Judaism.”*

26. Regarding **Middos Tovos**, that is, positive attributes from the Torah, the objector says that insufficient detail is given as to which attributes, such as welcoming guests or visiting the sick, are required to be demonstrated and how often. Therefore, in this respect, she says the requirements are unclear and parents would not be able to assess if they met them. I agree that this aspect of the arrangements does not comply with paragraph 1.37 of the Code. I note that, with the rabbi’s agreement, the requirement relating to Middos Tovos has been removed from the proposed arrangements.

27. On the requirement to demonstrate **Emunas Chachomim**, that is, reverence of Rabbinic authority, the objector says that it “*seems unreasonable*” to assess or measure “*a parent’s private thoughts*” and that self-certification could not be refuted by the Rabbinical Admissions Advisory Committee (which I shall refer to as “the committee” from now on). The rabbi explains in his guidance to the school that Emunas Chachomim “*means listening to Rabbinic views even on issues not strictly related to Jewish law.*” He agrees that,

*“...it is difficult to be clear and objective.”*

As paragraph 1.8 says that oversubscription criteria must be both clear and objective, I must conclude that this religious practice requirement does not comply with the Code. I note, however, that it remains in the proposed arrangements.

28. Moving on to **Tzenius**, in particular, modesty in dress, the objector mentions two of the “*Guidelines*” in Appendix A of the arrangements, which she says are neither clear nor objective. These are that sheitels, that is, wigs worn by married women, “*must be refined in terms of both length and style*” and the final requirement that “*clothing must not be tight...*” quoted in full in paragraph 12 above. She also says that the rule that “*Leggings may not be worn even under skirts*” is not based on Jewish law and should not qualify as religious practice. Finally, in relation to clothing, she says that it is unclear whether the requirements apply only to the applicant and her parents, or to other members of the family, and whether there are any requirements surrounding the father’s dress, as none are listed in the appendix.

29. I agree with the objector that the two requirements in Appendix A that she has highlighted are not objective. The Code does not define objective but, in the context of oversubscription criteria, I take it to mean that criteria are prohibited if they might reasonably be understood differently by different people. The satisfaction of faith-based criteria cannot depend on subjective judgment. Words and phrases such as “*refined*” and “*an air of dignity and finesse*” appear to me to be susceptible to different interpretations. These requirements therefore fail the Code’s test of objectivity and do not comply with paragraph 1.8. I note that, following guidance from the rabbi, the school’s proposed arrangements no longer include any reference to sheitels, nor do they state that clothing

should “*add an air of dignity and finesse to the wearer.*” The prohibition relating to leggings remains. This is clear and has the approval of the rabbi as a religious requirement.

30. In respect of who the requirements in Appendix A apply to, the school says that the arrangements make clear that the religious practice requirements relate to the girl applying for a place and her parents. I agree that this is the case. However, the requirements for fathers’ dress are not spelled out at all. I note that in the proposed arrangements, the school has included a set of guidelines relating to fathers’ dress, provided by the rabbi.

31. The arrangements also state that the central tenets of Tzenius include modesty “*in speech and behaviour.*” The objector argues that this requirement is insufficiently clear. In response, the school says that “*“Modesty” has a clear ordinary meaning*” that would be understood by all Charedi applicants. I do not consider that this guarantees that applicants might not come to different conclusions as to the demands of modesty in specific situations. Therefore, it does not comply with the Code. With respect to the proposed arrangements, the school emphasises that, “*the overall requirement of modesty will now be subject to the detail of the Shulchan Aruch.*”

32. The objector queries the status of Appendix B (rules for the use of the internet and mobile phones), which she describes as “*more like a home school agreement.*” She also says that the word “*regularly*”, to describe the use of a parent’s phone (as in the sentence I have quoted in paragraph 12), is insufficiently precise. In reply, the school points out that the arrangements explain that Appendix B outlines clear rules “*with specific regard to tznius and internet access.*” I agree that it is clear that compliance with these rules is necessary to satisfy the faith-based oversubscription criteria. I also consider that, in this specific context, using a phone “*regularly*” will be readily understood to mean that this is an action a pupil is in the habit of doing, rather than as a one-off event, for example, in an emergency. I do not regard this to be a breach of the Code.

33. Finally, in respect of the faith-based criteria, the objector says that the requirements relating to synagogue attendance and participation are unclear. In order to be prioritised under the faith-based criteria, a girl must have a parent or parents who,

*“...maintain active participation in an orthodox synagogue. Such participation should include regular attendance at communal prayer services and might also include participation in synagogue affairs and events or other communal activities.”*

The objector argues that neither “*regular attendance*” at services nor “*participation in synagogue affairs*” and “*attendance at other communal activities*” are sufficiently well defined. She also points out that the Cobb judgment made clear that only those activities that are of a religious nature can be taken into account. I agree with the objector both that “*attendance at other communal activities*” and “*participation in synagogue affairs*” may well not be religious activities and that parents could not easily understand how they will be reasonably satisfied, as paragraph 1.37 requires. I note that, following the rabbi’s guidance, the proposed arrangements do not include any of the phrases I have found not to comply

with the Code. Rather, the minimum requirement is for the applicant's father to perform three daily prayers in a quorum whenever possible.

### *The SIF*

34. The SIF, which is part of the determined arrangements, must be completed by all applicants seeking to have their application prioritised on faith grounds. It asks for the name of the girl's present school and her previous school (if any). Details of "*Synagogue membership*" and the length of time "*you have been members of the synagogue*" are also requested. The objector says that it is not clear that this information is "*required for admissions.*" Paragraph 2.4 of the Code stipulates that SIFs must only be used to "*request additional information when it has a direct bearing on decisions about oversubscription criteria.*" Furthermore, she points out that membership of an Orthodox synagogue requires parents to be "*halachically Jewish*" and that admission criteria that made such a requirement were found by the Supreme Court to discriminate against pupils on the basis of race under the Race Relations Act 1976 in the JFS case (R (E) v Governing Body of JFS [2009] UKSC 15).

35. I agree with the objector in both respects. The SIF asks for information that is not required to apply the school's oversubscription criteria and therefore breaches the Code. I uphold this aspect of the objection. I note that in the proposed arrangements the SIF has been revised and does not include questions about the applicant's present or previous school or the family's synagogue membership.

36. The objector also queries the procedure used by the school on receipt of a completed SIF. As described in paragraph 13 above, the applicant's parent(s) certify that they "*meet the Chareidi criteria*". The SIF then states,

*"The School reserves the right to ask for confirmation from Rabbinical Authority."*

As can be seen in extracts from the arrangements that I have quoted above, the school reserves the right to contact an appropriate rabbi to confirm that the criteria are met by the applicant. In the event of "*any dispute*", the final decision is made by the committee.

37. I have already concluded that an applicant's performance of some of the religious practice requirements described in the arrangements, particularly those carried out privately at home, cannot be confirmed objectively by a rabbi, and therefore are in breach of the Code. The objector also argues that the committee is not independent of the school, which "*seems unfair*" and that,

*"Allowing a committee of the school to arbitrary [sic] decide who to accept and reject casts a shadow over the objectivity of the admissions process."*

Paragraph 14 of the Code requires the "*practices...used to decide the allocation of school places*" to be fair, clear and objective.

38. I do not agree with the objector's suggestion that it is wrong that the committee is not independent of the school. The admission authority of a voluntary aided school is the governing board. The governing board, by its very nature, is not independent of the school, but it has the task both of setting the admission arrangements and making decisions about the allocation of places; it must do so in a fair and objective way. However, I do share the objector's concern that it is not clear on what basis the committee will make its decision and, indeed, in what circumstances confirmation of the applicant's religious practice will be sought from a rabbi. In this respect, the arrangements do not comply with the requirements of the Code.

39. In the re-drafted SIF, which was provided to me by the school, the proposed change to the arrangements, described in paragraph 25 above, is included. A rabbi signs the form to confirm that the family meets the requirements of public religious observance and that he has the option to report if he has clear evidence that the family fails to meet the private elements. The school acknowledges that that *"its Admission Committee has no role in deciding the adequacy of the parent's self-certification of the SIF."*

#### *The random allocation process*

40. The objector reports that there is *"much cynicism"* amongst applicants about what she terms *"the lottery"*, that is, the process of random allocation, used to rank applicants when more than one of them has priority under an oversubscription criterion. There is a concern, she says, that the process is *"rigged."* In particular, she makes reference to a sentence in the arrangements, relating to the waiting list, that says,

*"A girl may move up and down the list as new girls are added to it."*

She suggests this is at odds with the requirement in the Code that *"a fresh round of random allocation must be used each time a child is to be offered a place from a waiting list"* (paragraph 1.35). She also queries whether the process is supervised by someone independent of the school, as this paragraph also requires.

41. It is a serious matter to allege that an admission authority is guilty of deliberate maladministration, as the word *"rigged"* implies. It is not within my jurisdiction to investigate such a claim (it is a matter for the Local Government Ombudsman), but I would comment that I have been presented with no evidence to substantiate it.

42. As for the specific grounds of objection, the school explains that the arrangements correctly explain that places on the waiting list are not fixed by the time the application is received but are ranked in line with the oversubscription criteria. I agree. If, for example, a Charedi Jewish girl with a social or medical reason for admission to the school were added to the waiting list, she would be placed above Charedi Jewish girls without such a reason. Random allocation would be required only when there is one place to be allocated and there is more than one child ranked at the top of the waiting list under the same oversubscription criterion. The school confirms that a fresh round of random allocation takes place in these circumstances. I do not uphold this aspect of the objection.

43. The arrangements state that the random allocation process takes place “*in the presence of an independent observer.*” I am not convinced that this is quite what the Code requires. An observer would not appear to me to be someone who supervises the process. Such a person must not, of course, be a member of the governing board.

#### *Other matters raised by the objector*

44. The objector raises a number of other matters, such as the conduct of the school admission appeal process, that are not within my jurisdiction and upon which I make no comment. There are, however, two further points that I will address briefly. First, the objector points out that the timetable for submitting and hearing admission appeals did not appear on the school’s website by 28 February, as required by section 2.2 of the School Admission Appeals Code.

45. Second, the objector provides a copy of the proposal made to Barnet Council in January 2016 to establish the school as a voluntary aided school. This contains the following statement:

*“The proposer states that the governing body of the voluntary aided school will ensure that any faith based priority for admission will be measured through independently verifiable criteria, including synagogue attendance, commitment to Jewish learning and volunteering with the Jewish community.”*

She submits that, “*once state funding was granted a completely different admissions policy was implemented, ignoring what was promised on the state funding application.*” It is not for me to comment directly on what the objector says, as my jurisdiction is limited to considering the determined arrangements. However, the school has provided me with the proposed admission arrangements it submitted to accompany its proposal to enter the maintained sector; they are not substantially different from the arrangements determined for admission in September 2019 and 2020. It is the case, of course, that I have found that several of the religious practice requirements are not independently verifiable. I do not know to what extent the arrangements were scrutinised by Barnet Council in 2016 as part of its consideration of the statutory proposals to establish the school as a voluntary aided school.

#### *The timescale for making changes*

46. I commend the school for its willingness to make the changes necessary to ensure that the arrangements comply with the requirements relating to admissions. As the process of making applications for admission in September 2020 is almost underway, the governing board has requested that revised arrangements should take effect for applications for admission in September 2021. This, it says, would avoid the possibility of any confusion for parents and provide an opportunity for a period of consultation on the changes that it is proposing, particularly self-certification by applicants that they meet the religious practice requirements.

47. I agree that such a timescale is appropriate. I therefore determine that the required revisions must be made by 28 February 2020, which is the deadline for determining arrangements for admission in September 2021.

## Summary of Findings

48. The arrangements give priority to applicants whose families meet the definition of “Charedi Jews.” A significant number of religious practices must be undertaken in order for an applicant to be considered under the faith-based oversubscription criteria. These include requirements relating to clothing and the use of mobile phones and the internet. I am not satisfied that these “religious activities” have been “laid out” by the school’s religious authority in the sense required by paragraph 1.9(i) of the Code so as permissibly to form part of the admissions criteria. It is a breach of the Code for them to be included in the arrangements and I uphold the objection in this respect.

49. Nonetheless, I have considered the oversubscription criteria and find that in various ways they do not meet the Code’s requirements of clarity and objectivity. Parents would not be able easily to understand how many of the faith-based criteria will be reasonably satisfied. The way in which rabbinical confirmation is obtained of the family’s religious practice is not clear.

50. The SIF asks for information that does not have a direct bearing on decisions about oversubscription criteria and therefore breaches paragraph 2.4 of the Code. I uphold this aspect of the objection.

51. I do not uphold the part of the objection relating to the random allocation process.

## Determination

52. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2020 determined by the governing board for Menorah High School for Girls, Barnet.

53. 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 the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2020.

Dated: 30 August 2019

Signed:

Schools Adjudicator: Peter Goringe