



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** REF3625

**Admission authority:** The governing board of Noam Primary School for Noam Primary School, Barnet

**Date of decision:** 23 October 2019

## Determination

**I have considered the admission arrangements for September 2020 for Noam Primary School, Barnet in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that they do not conform with requirements.**

**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.**

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the SSFA), an objection was referred to the Office of the Schools Adjudicator (OSA) by a member of the public, about the admission arrangements (the arrangements) for Noam Primary School (the school), for September 2020, the date of the objection was 3 June 2019.

2. My initial inquiries discovered that the arrangements referred by the member of the public were not the arrangements for the school and that the governing board had not in fact determined arrangements for 2020. Subsequent to these inquiries the governing board determined arrangements for 2020 on 29 July 2019. It appeared to me that the arrangements determined by the governing board did not, or might not, conform with the requirements for admission arrangements.

3. The areas in which the arrangements did not, or might not, conform with requirements were:

- the process of determination and publication of the arrangements;

- the faith based elements of the arrangements; and
- the accuracy and clarity of parts of the arrangements and conformity with requirements concerning waiting lists and applications outside of the normal age range.

4. The parties to the case are the governing board, Barnet Council (the Council) and the Office of the Chief Rabbi of the United Hebrew Congregations of the British Commonwealth (OCR) which is the religious authority for the school.

## Jurisdiction

5. The original objection was made after the date of 15 May 2019 which was the date by when objections to admission arrangements for 2020 had to be lodged. Therefore it was not possible to consider these arrangements under section 88H of the SSFA. Nor was it possible at that time to consider the arrangements under section 88I of the SSFA because the admission authority, that is the governing board, had not determined them. These arrangements were subsequently determined under section 88C of the SSFA by the school's governing board on 29 July 2019. It appeared to me that the arrangements did not, or might not, conform with the requirements for admission arrangements. I therefore decided to use my power under section 88I(5) of the SSFA to consider them as a whole.

## Procedure

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

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

- a) a copy of the determined arrangements
- b) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
- c) comments from the governing board on the matters raised and supporting documents;
- d) comments from the Council on the matters raised; and
- e) copies of correspondence between OCR and the governing board.

8. I have also taken account of information received during and after a meeting (the meeting) I convened on 23 September 2019 at the school. The meeting was attended by representatives of the Council and the OCR as well as by representatives of the school.

## Background

9. The school for children aged 4 to 11 is currently situated in the London Borough of Brent, near Wembley Stadium. It has operated on its current site since 1999 as an independent school with a Jewish religious ethos. The school opened with just five pupils and currently has over 180 on roll. The current site and buildings were not designed as a school and pose challenges to the staff who make the best of the limited accommodation. The opportunity arose for the school to move to new purpose built accommodation in Burnt Oak in the neighbouring London Borough of Barnet which it will do early in 2020. The new site is closer to the homes of most children attending the school. This relocation was the trigger for the governing board deciding to move into the maintained sector as a voluntary aided school which its website says had been the intention from when the school was established. Because Barnet will be the local authority which maintains the school in future, that was the council which approved the school becoming a voluntary aided school on 29 November 2018. The school took its new status on 1 January 2019.

10. The school has a published admission number (PAN) of 30 and gives priority in its arrangements to:

- Looked after and previously looked after Orthodox Jewish Children
- Orthodox Jewish Children with siblings at the school
- Other Orthodox Jewish Children
- Other looked after and previously looked after children
- Other children

11. Random allocation is used as a tie breaker and a supplementary information form (SIF) is used to collect information to determine if the child is considered as Orthodox Jewish.

## Consideration of Case

### Determination and publication of admission arrangements

12. The original referral of these arrangements on 3 June 2019 was from a member of the public who had seen on the school's website information about how to apply to the school. I looked at the school's website on 6 June 2019; the admission arrangements which I found did not conform with the statutory requirements relating to admission to a state-funded school. In response to my initial enquiries about these arrangements the chair of the governing board told me that the relevant page on the website had not been updated after becoming a voluntary aided school and the admission arrangements shown were those for the former independent school.

13. In the same letter I was also sent a copy of the admission arrangements for 2020 and the SIF. I was told that the arrangements were those “*adopted as part of the school becoming voluntary aided on 1 January 2019 and formed part of the school’s Proposal to become voluntary aided.*” The letter admitted that the governing board had not formally agreed the arrangements for 2020 and said that it would do so at the governing board meeting in July. On 7 August 2019 I received the minutes of the meeting of the governing board held on 29 July 2019 at which the arrangements were determined in the form that I had been sent earlier.

14. The requirements for the determination and publication of admission arrangements are set out in paragraphs 1.46 and 1.47 of the Code. The first of these says “*All admission authorities **must** determine (i.e. formally agree) admission arrangements every year, even if they have not changed from previous years and a consultation has not been required. Admission authorities **must** determine admission arrangements for entry in September 2016 by 15 April 2015 and for all subsequent years, by 28 February in the determination year.*” The second says “*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made). Admission authorities **must** send a copy of their full, determined arrangements to the local authority. Admission authorities **must** send a copy of their determined admission arrangements for entry in September 2016 as soon as possible before 1 May 2015, and for all subsequent years, as soon as possible before 15 March in the determination year. Admission authorities for schools designated with a religious character **must** also send a copy of their arrangements to the body or person representing their religion or religious denomination.*”

15. The school became voluntary aided on 1 January 2019 and the admission arrangements for September 2019 could only be those set in the process of becoming a voluntary aided school. However, the governing board took on its responsibilities as an admission authority on 1 January 2019 and should therefore have determined the admission arrangements for 2020 by 28 February 2019, published these on its website by 15 March 2019 and notified the appropriate bodies listed in the Code including the religious authority for the school. The Code also requires arrangements to be displayed on the school’s website “*for the whole offer year*”, so the arrangements for 2019 should also have been on the school’s website when I first looked, but were not. The governing board acknowledges that it did not meet the requirements of these paragraphs.

### **Faith-based elements of the arrangements**

16. Section 85 of the Equality Act 2010 (the EA) includes a general prohibition on discriminating against pupils on the grounds of religion for admission. Schedule 11 to the EA sets out exceptions to this general prohibition for independent schools listed in the register of independent schools as having a ‘religious ethos’ and for voluntary and foundation schools designated under section 69 of the SSFA as having a ‘religious character’. Paragraph 1.36 of the Code says “*Schools designated by the Secretary of State*

*as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.”*

17. When the school was an independent school it was listed as having a religious ethos and so was permitted to discriminate on the grounds of religion for admission. However, when these arrangements were drawn to my attention the new voluntary aided school was not listed as having a religious character on the Department for Education (DfE) database and had not been designated by the Secretary of State for Education as having a religious character so was not permitted to use faith-based oversubscription criteria at that time. The Secretary of State designated the school as having religious character in Statutory Instrument 2019/1202 dated 30 August 2019. This designation could not happen until after the school established, so was not in place when the Council approved the school becoming voluntary aided (a decision which took into account the proposed admission arrangements for 2019), nor was it in place when the governing board belatedly approved the 2020 arrangements in July 2019.

18. Following the meeting the governing board wrote to me saying *“The school accepts that it did publish admission arrangements with faith-based oversubscription criteria before being designated as a school with a religious character. However, this only arose because of the particular circumstances of it becoming voluntary aided and the timing of it being able to obtain a faith based designation.”* I was told that throughout the process of consultation on becoming a voluntary aided school it had been clear that the school was proposed as a school with a religious character, approved by the Council on that basis and was intending to seek the appropriate designation to allow it to have faith based arrangements. The governing board said that with only a month between the Council giving its approval and the school opening as a voluntary aided school, there was no time to obtain an instrument of government, get confirmation that the OCR would be the body representing the religion and apply for designation as a school with religious character. The governing board said *“In the circumstances, as (1) Noam had been clear throughout that it intended to obtain faith designation; (2) a successful application for faith designation was expected and; (3) given the disruption that would have been caused if Noam operated on a non-faith basis for the short interim period, Noam believes it was legitimate for it to proceed in the manner it did while it waited for its formal faith designation.”*

19. It is not clear to me, and I did not ask, why it was so urgent for the school to become voluntary aided; it would not transfer to the new site for a further year. The governing board told me that they did not apply to the Secretary of State for designation as having a religious character until 23 June 2019 which I note is after I had written to them asking for evidence that they were permitted to set faith-based oversubscription criteria through being designated as having a religious character. It is fortunate that the school was undersubscribed for September 2019 and so it was not necessary to use faith-based oversubscription criteria which were not in fact lawful in advance of designation.

20. While it may be understandable that a relatively small school undergoing major changes could inadvertently overlook some requirements, its advisers should have been fully aware of them. In the report to the Council at which the proposal to become a voluntary aided school was approved it is stated “*The proposed admission criteria for the maintained school is [sic] compliant with the School Admissions Code*”. It is disappointing that the Council did not appear to understand the need to secure designation before faith-based arrangements could be used along with the requirements of paragraph 1.36 of the Code quoted above and the other parts of the Code which I will refer to later.

21. Paragraph 1.38 of the Code says “*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, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. 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.*”

22. The body or person representing the religion or religious determination for most voluntary schools are set out in Schedules 3 and 4 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations). This is not a comprehensive list as not all voluntary schools with a religious character are listed and not all religions or denominations are listed, for example, ecumenical schools. At the meeting it was clear that both the governing board and the OCR understood that the OCR was the body representing the religion. I asked for evidence that this had been formally agreed, such as an exchange of letters. The OCR provided me with a letter dated 4 September 2019 confirming this agreement.

23. At the meeting I asked if the OCR had provided the governing board with any guidance on constructing faith-based admission arrangements, or if the governing board had consulted the OCR about how membership or practice of the faith was to be demonstrated. At the meeting it was accepted by all parties that the answer to both questions was no. After the meeting the OCR provided me with a copy of the guidance published on its website for all the schools for which it is the religious authority and which would have been available to the school when the arrangements were determined.

24. Paragraph 1.9i of the Code says 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)*”. This requirement of the Code was addressed by Mr Justice Cobb in R (on the application of the governing body of the Oratory School) v The Schools Adjudicator [2015] EWHC 1012 (Admin). In this judgement Mr Justice Cobb concluded “that the phrase “*laid out*” means specifically ‘*laid out*’ in schools admissions guidance published by the religious authority”. At the meeting it was established that the OCR had not provided any specific guidance to the governing board of the school as distinct from its generic guidance

to all of its schools. Therefore, the only religious activities which would be permitted by paragraph 1.9i of the Code are those laid out in the guidance from the OCR website.

25. I have established that at the time the arrangements were determined by the governing board it was not permitted to use faith-based oversubscription criteria. The school now has been designated as having a religious character and so may, from now on, use faith-based oversubscription criteria. I will go on to consider whether the determined arrangements are consistent with the guidance from the OCR and consider them in more detail in relation to the Code.

26. 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.”* Paragraph 1.37 of the Code takes the last sentence of paragraph 14 further and says *“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.”*

27. The arrangements begin *“Noam Primary School was founded to provide a sound Jewish religious and secular education and priority for admission is given to those children of families where both parents are members of orthodox synagogues and whose doctrines, principles and practices are in accordance with strictly Orthodox Judaism as determined by the Rabbinical Authority of the school. The decision as to whether or not an applicant qualifies for priority consideration will be based on the information provided by the applicant in the Supplementary Information Form (“SIF”). In this policy those who qualify for priority are referred to as Orthodox Jewish Children and in the event of any dispute as to whether a child is an Orthodox Jewish child the ruling of the Rabbinical Authority of Noam Primary School is final.”*

28. This is in my view unfair and so does not conform with paragraph 14. It is unfair because of the reference to *“both parents”* being members of orthodox synagogues and acting in accordance with Orthodox Judaism. While the governing board is entitled to take a view on families where just one of two parents meets religious requirements it would be unfair to discriminate against a child if one parent was dead, or absent for another reason such as separation or divorce.

29. The paragraph is also unclear and so does not conform with either paragraph 14 or 1.37 because of the vagueness of the terms *“Rabbinical Authority”* and *“Orthodox Jewish Children”*. There are many rabbinical authorities of which the governing board has agreed for the OCR to be the body representing the religion. As set out above, it is the role of the OCR as religious authority to give the governors guidance and to lay out religious activities which the governing board can take into consideration when prioritising admissions. Any religious activity put forward by another rabbinical authority would not conform with paragraph 1.9i of the Code. It is not clear from this paragraph how information provided in the SIF will be used to determine if a child is *“Orthodox Jewish”* as this term is not defined and is open to interpretation.

30. Paragraph 1.9e of the Code says that admission authorities “**must not ... give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority.**” Membership of a synagogue usually requires a payment. Although the SIF includes in the definition of membership those who have not formally joined, this is not clear at this point in the arrangements. Membership of a synagogue is not included in the guidance from the OCR and therefore cannot be used to prioritise children for a place at the school.

31. The requirements for the SIF are set out in paragraph 2.4 of the Code. “*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.*”

32. The SIF begins “*In the event that the school is oversubscribed, Noam’s oversubscription criteria gives priority to children of families where both parents are members of orthodox synagogues and whose doctrines, principles and practices are in accordance with strictly Orthodox Judaism as determined by the Rabbinical Authority of the school. We define membership of an orthodox synagogue to include where you regularly participate in services at an orthodox synagogue, whether or not you have formally joined as a member of that synagogue.*”

33. This paragraph is similar to the one from the arrangements quoted above and so falls foul of the same requirements of the Code and could lead to the conclusion that both parents are required to sign the form as there is provision for them to do so. It also introduces the term “*regularly participate in services ...*”. In order to conform with paragraph 1.37 of the Code parents must be told whether this is, say, one or more times a week or a month and how long this level of participation must have been going on for.

34. The third paragraph on the SIF says “*Noam will give priority first to applicants with siblings who are currently at Noam at the time of the application.*” This contradicts the oversubscription criteria where first priority is given (as required by the Code), to looked after and previously looked after children of the faith, thus making the arrangements unclear.

35. On the second page of the SIF parents are invited to provide information which is “*not mandatory and will not affect your application, but will help us to process your form if there are any questions.*” Paragraph 2.4 of the Code prohibits asking for any information that does not have a “*direct bearing on decisions about oversubscription criteria*” so this type of information must not be asked for on a SIF. Furthermore, paragraph 2.10 of the



Code says “*In the normal admissions round, offers of primary and secondary places **must** be sent by the home local authority and schools **must not** contact parents about the outcome of their applications until after these offers have been received. Admission authorities **must not** provide any guarantees to applicants of the outcome of their application prior to the formal notification of any offers of a place in a suitable school by the home local authority.*” It is, therefore, difficult to see why a need to contact with parents during the processing of applications is envisaged and how that might take place without breaching the Code.

36. As quoted above, paragraph 14 of the Code requires that admission arrangements are objective. The SIF refers to “*an acceptable reference from your Rabbi*”. The word acceptable is not objective on its own and there is no explanation as to what would or would not merit or amount to an “acceptable” reference.

37. The section on the SIF headed “*Religious requirements*” lists seven questions to which parents must answer positively to meet the religious test. These in my view all reflect the rabbinic principle set out in the OCR guidance “*The world stands on three things: Torah (Jewish study and knowledge), Avodah (the life of religious observance and prayer) and Gemillut Chassadim (acts of kindness and social responsibility).*” However, the arrangements must also meet the requirements of the Code to be clear and objective and in paragraph 1.37 that “*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*” I should emphasise that many Jewish schools have constructed faith-based arrangements based on these principles which do conform with this and other Code requirements. That does not mean that the arrangements determined by the school necessarily conform.

38. One of these questions is “*Do you comply with Jewish law with regard to modest dress, including keeping your head/hair covered, as appropriate?*” In my view this does not meet the requirement for admission arrangements to be objective. What one person considers to be modest may not be considered to be modest by another even within the same religious community.

39. This section of the arrangements requires the provision of evidence that learning is incorporated into the parent’s schedule. The next section requires evidence of regular participation in the services of a synagogue and of involvement in community or charitable activities. The nature of this evidence is not specified and while there is a definition of the frequency of participation in services at a synagogue here, the length of time that this participation must have been for is not stated. Similarly there is no indication of the amount of time a parent must give to learning or charitable work, or the length of time that these activities should have been followed. For these reasons the arrangements are not clear and do not conform with the Code.

## **Other matters which may not conform with the Code**

40. Paragraph 1.6 of the Code says “*The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when*

*there are more applications than places and the order in which the criteria will be applied.*" The oversubscription criteria in the arrangements are not numbered, doing so would make it absolutely clear in which order they would be applied.

41. The definition of previously looked after children in the arrangements refers to residence orders. The Children and Families Act 2014 replaced residence orders with child arrangements orders. The inclusion of obsolete terms makes the arrangements unclear.

42. The arrangements say that "*All applications for places at the school must be submitted on the Barnet CAF form*". This is not the case and it may not be clear to parents that CAF stands for common application form. Paragraph 2.3 of the Code says "*Regardless of which schools parents express preferences for, the CAF is required to be returned to the local authority in the area that they live*".

43. The requirements for waiting lists are set out in paragraph 2.14 of the Code. This includes a requirement to state that "*each added child will require the list to be ranked again in line with the published oversubscription criteria.*" This requirement is not met.

44. While the arrangements contain information about admission outside of the normal age group, they do not meet the requirement found in paragraph 2.17 of the Code to make clear the process for requesting admission out of the normal age group.

## **Summary of Findings and timing of required changes**

45. I find that these arrangements do not conform with requirements relating to admission arrangements. I have found breaches of requirements found in paragraphs 14, 1.6, 1.9, 1.36, 1.37, 1.38, 1.46, 1.47, 2.3, 2.4, 2.10, 2.14 and 2.17 of the Code.

46. The school allowed just one month to convert from an independent school to a voluntary aided school. This did not allow sufficient time to obtain designation as a school with a religious character from the Secretary of State for Education before these arrangements were required to be determined and published. Therefore, the school was not permitted to allocate places by reference to faith then or when these arrangements were determined. The school is now designated as having a religious character and so, when revising these arrangements it may allocate places by reference to faith in future observing the requirements of paragraphs 1.9, 1.37 and 1.38 of the Code.

47. While I appreciate the additional work associated with changing status in a short space of time and planning for a move to new premises, this does not excuse the governing board from its duty to determine and publish admission arrangements as required by the Code which it did not do.

48. The governing board is not permitted to take into account any religious activities when prioritising children for admission other than those laid out by the OCR. As I have explained above, the faith-based aspects of the arrangements are covered by the guidance from the OCR but fail to conform with the Code because they are not entirely fair, clear or

objective. Parents would not easily understand how all of the faith based criteria will be satisfied and the SIF used to assess this does not conform with the Code.

49. Some other non-faith elements of the arrangements do not conform with the Code as set out above.

50. The governing board is required by paragraph 3.1 of the Code to revise the arrangements to give effect to my determination within two months unless I set an alternative timescale. At the meeting, after consideration of imminent religious holidays ending with Simchat Torah on 22 October 2019, it was agreed that if this determination was published shortly after these holidays it would be possible for the governing board to revise these arrangements in a two month period ending before the deadline for applications for primary school places in January.

## **Determination**

51. I have considered the admission arrangements for September 2020 for Noam Primary School, Barnet in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that they do not conform with requirements.

52. 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.

Dated: 23 October 2019

Signed:

Schools Adjudicator: Phil Whiffing