



Office of
the Schools
Adjudicator

Determination

Case references: ADA3721 and ADA3722

Objector: Two individuals

Admission authority: The governing board for Islamia Primary School, Brent

Date of decision: 25 September 2020

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 2021 determined by the governing board for Islamia Primary School, Brent.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which 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 the determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), two objections have been referred to the adjudicator by individuals (the objectors), about the admission arrangements (the arrangements) for Islamia Primary School (the school), a voluntary aided school with a Muslim religious character for boys and girls aged 4 to 11, for September 2021. Both objections are to changes to the arrangements that provide new priorities for places to children of a parent who has reverted to Islam and children of parents who are former pupils of the school, and to the consultation that preceded the determination of the arrangements.

2. The local authority (LA) for the area in which the school is located is Brent Council. The LA is a party to this objection. Other parties to the objection are the Association of Muslim Schools UK, which is the religious authority for the school, and the objectors.

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. The objectors submitted their objections to these determined arrangements on 13 May and 14 May 2020, respectively. One of the objectors 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. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

5. 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 (SIF);
- c. the objectors' forms of objection dated 13 and 14 May 2020 and further submissions;
- d. the school's response to the objection and further responses to my enquiries;
- e. details of the consultation undertaken in respect of the arrangements for admission in September 2021, including a summary of responses made; and
- f. details of the allocation of places for admission in September 2018, 2019 and 2020.

The Objection

6. Taken together, the objectors argue that newly-introduced oversubscription criteria giving priority to Muslim children of at least one parent who has reverted to Islam and Muslim children of parents who are former pupils of the school (alumni) are in breach of

paragraphs 1.9 e) and f) of the School Admissions Code (the Code), which prohibit the giving of priority to children, respectively, on the basis of any practical or financial support parents may give to the school and according to the educational status of parents applying.

7. Both objectors point out that, as a result of the introduction of the new criteria, the priority for children with siblings at the school has become the fifth rather than the third oversubscription criterion. The objectors refer to the “disadvantage” and “hardship” this will create and describe the change as “unfair.” Paragraph 14 of the Code requires admission authorities to ensure that the practices and the criteria used to decide the allocation of school places are fair.

8. The objectors also say that the consultation that preceded the adoption of these criteria was flawed. Paragraphs 1.42-1.45 of the Code set out the requirements for consultation.

Other Matters

9. There are two matters in the determined arrangements that appeared to me not to conform with the requirements relating to admissions. First, the priority for children of members of staff does not specify that such children must be Muslim children. It therefore appears that children of staff who are not of the faith of the school have priority above looked after children and previously looked after children not of the faith of the school. This is contrary to paragraph 1.37 of the School Admissions Code (final sentence), which reads,

“Where any element of priority is given in relation to children not of the faith they [that is, the admission arrangements] **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.”

10. Second, the arrangements do not make clear the process for requesting admission out of the normal age group, as required by paragraph 2.17 of the Code.

Background

11. The school opened in 1983 as an independent school. It became a maintained school (voluntary aided) in 1998. The Published Admission Number (PAN) for admission to the reception year (YR) in September 2021 is 60. Historically, the school has been oversubscribed.

12. The oversubscription criteria can be summarised as follows:

- a. Looked after Muslim children and previously looked after Muslim children.
- b. Children of staff.

- c. Muslim children of at least one parent who has reverted to Islam (not born in the Islamic faith). Up to a maximum of 25 per cent of the PAN.
- d. Muslim children of parents who are former pupils of the school (alumni) since it became a Voluntary Aided school (1998). Up to a maximum of 15 per cent of the PAN.
- e. Muslim children who have a sibling at the school.
- f. Other Muslim children.
- g. Other looked after children or previously looked after children.
- h. Other children.

Criteria c. and d. were introduced into the arrangements for admission in September 2021 following a period of consultation that took place between 5 December 2019 and 31 January 2020. Within each criterion, priority is on the basis of distance from the school. Where distances are equal, random allocation is used as a tie-breaker.

Consideration of Case

The consultation process

13. I consider first the consultation that preceded the determination of the arrangements for admission in September 2021. Consultation was necessary as the governing board proposed to introduce two new criteria giving priority, respectively, to up to 25 per cent of the PAN to children of parents who had reverted to Islam and up to 25 per cent to children of alumni to the school. It was proposed that these criteria should have third and fourth priority in the event of oversubscription, ahead of children who have a sibling at the school and the other criteria that follow. The consultation was launched by the publishing of the proposed arrangements on the school's website on 5 December 2019 and the issuing of a letter dated on the same day. The list of the intended recipients matches the range of stakeholders required to be consulted by paragraph 1.44 of the Code, apart from parents of pre-school children, but I have been provided with some evidence there was consultation through local nurseries. I am satisfied that the range of consultees met requirements; indeed, the objectors have not argued that it did not.

14. A response form was made available to consultees and a public consultation meeting was held on 16 January 2020. A total of 272 responses was made to the consultation; 90 per cent expressed opposition to the proposed changes. The governing board considered the outcome of the consultation on 13 February 2020. It was decided to reduce the proportion of places available to alumni of the school to 15 per cent. The proposed arrangements were determined with this change and were published on the school's website "at the beginning of March." The requirements of the Code relating to the determination and publication of admission arrangements were therefore met.

15. In their objections and in subsequent correspondence the objectors refer to a lack of “transparency” in the consultation; in particular, they say that the governing board’s reasons for including a priority for children of alumni were not always made clear. They also state that,

“Parents lodged complaints [about the consultation meeting] because they felt belittled and discriminated against by the panel during the meeting.”

Minutes of the governing board confirm that four complaints were received about the consultation meeting. The objectors also say that the minutes of the consultation meeting were not made available and that parents were not promptly informed of the decision made by the governing board following the consultation period.

16. In response, the chair of governors explained that the minute-taker was taken ill shortly after the consultation meeting and formal minutes were not produced. She did, however, provide me with the rough notes that were taken at the meeting. A letter was sent to parents on 14 May 2020 outlining the outcome of the consultation and the determination of the arrangements. In the letter the chair apologised “unreservedly” that parents had not been informed sooner, which she described as an “oversight.” One objector comments that this letter was sent the day before the deadline for referring objections to admission arrangements to the Office of the Schools Adjudicator.

17. The requirements for consultation are set out in paragraphs 1.42 – 1.45 of the Code. These paragraphs prescribe the timescale for consultation, who must be consulted and how the proposed admission arrangements must be made available. I consider that these requirements have been met. There is no requirement to hold a public meeting. In this case one took place and the objectors and others who attended were unhappy with aspects of it. It is not within my jurisdiction to comment on the conduct of the meeting, although I will, in due course, examine the reasons given for the introduction of the new criteria. Similarly, nothing in the Code or legislation requires admission authorities to publish minutes of a consultation meeting or to contact parents specifically to inform them of the outcomes, apart from publishing the determined arrangements on the school’s website. Paragraph 1.45 concludes in this way,

“Failure to consult effectively may be grounds for subsequent complaints and appeals.”

In my view, consultation in this case was reasonably effective; a relatively large number of responses were received. I do not find that the consultation process was flawed.

The new oversubscription criteria

18. I turn now to consider the criteria to which objection has been made, that is, the priority for children of parents who have reverted to Islam (referred to throughout correspondence as “reverts”) and the priority for children of alumni. I should make clear that

at this stage my concern is to establish whether the criteria themselves are in breach of the mandatory provisions of the Code or of the underlying legislation, rather than their likely effect on the pattern of admissions, which I will address separately.

19. With respect to children of alumni, the objectors cite paragraphs 1.9 e) and f) of the Code which prohibit the giving of priority in admission arrangements, respectively, “on the basis of any practical or financial support parents may give to the school” and “according to the occupational, marital, financial or educational status of parents applying.” The objectors make similar points about statements they say were made at the consultation meeting:

“During the meeting the panel explained to the parents in attendance that they wished to encourage alumni to come back to the school as they tended to be professionally successful, therefore they could ‘share their skills to drive standards up, hold the school to account and give something back thanks to their professional status.’”

The objectors argue that this rationale demonstrates that priority is proposed to be given to children of alumni because of the practical help they can give to the school (contrary to paragraph 1.9 e) and their occupational status (contrary to paragraph 1.9 f). One of the objectors also says that the school has been making strenuous efforts to increase the volume of voluntary contributions made by parents (set at £450 a year), in order to support the broader curriculum of the school. She believes that the priority for children of alumni is intended to increase the number of parents “more capable of supporting the school.”

20. The notes of the meeting are not sufficiently detailed to confirm the precise wording of statements that were made by participants. However, in her response to the objection, the chair of governors explains that,

“The alumni will offer an insight into the school that any parent who hasn’t attended the school themselves cannot possible [sic] provide. They have experienced the school from the inside out; both the good and the bad.”

She also says that it was the view of the admission authority that “the ethos of the school would be strengthened by introducing the Alumni criteria [sic] to the Admissions policy.” The chair makes clear that there is no expectation that either alumni or reverts should make any particular contribution to the school:

“Any revert and any alumni of the School will qualify for priority without reference to their financial status, educational background or ability to provide practical support.”

The chair also points out that the criterion,

“specifically limits the alumni to children of parents who attended the school since it became voluntary aided and does not include parents who attended the school when it was privately funded.”

21. With respect to the priority for children of reverts, the objectors are more concerned about the effect of the new criterion than whether in itself it breaches any specific provision of the Code or the legislation. The chair of governors explained the reason for the criterion in this way:

“for some time it has been acknowledged that those who revert to Islam are often isolated socially and are in need of help and support from the wider Muslim community. Yusuf Islam [the founder of the school] himself is a revert.”

22. One of the objectors takes issue with the reference to supporting the school's ethos. She says,

“Faith schools should not be able to legally give preference based on compliance to school ethos (children of alumni considered to be more likely to share and embody school ethos and reverts like the Founder of the school), they should only base their preference on faith/belief grounds.”

In fact, it is a breach of paragraph 2.4 d) of the Code for any school, whether with a religious designation or not, to ask parents to agree to support its ethos in a practical way. However, this is not something that the school is requesting; rather, the governing board simply believes that the introduction of the priority for children of alumni will have a beneficial effect on the ethos of the school.

23. As the foregoing paragraphs show, the objectors are very concerned about the reasons why the governing board has decided to introduce the new criteria, particularly the priority for children of alumni. My task at this stage, though, is not to come to a conclusion about what the true reasons for the new criteria are, but to determine whether those criteria are in breach of the Code. In order to qualify under either of the criteria, parents are not required to make any financial contribution to the school or to give it practical support, or indeed to pledge to do. The governing board may hope that parents may do so, but it is not necessary to gain priority for a place. I therefore do not consider that they are in breach of paragraph 1.9 e). Similarly, with reference to paragraph 1.9 f), there is not a requirement that parents demonstrate that they are employed in a particular occupation. In order to be considered alumni of the school, parents must, of course, have attended it. I do not regard this as conferring an “educational status”, which I take to relate to educational achievement, including qualifications obtained at school and in further and higher education. I do not uphold the objection on the grounds that the criteria giving priority to the children of alumni and reverts breach paragraph 1.9 of the Code.

24. The priority for children of reverts is a faith-based admission criterion, which means that there are other requirements for the governing board. Paragraph 1.38 of the Code stipulates that, as the admission authority for the school, it must have regard to any guidance from the body representing the religion of the school, in this case the Association of Muslim Schools UK. The religious body did not provide me with any guidance it provides for schools; it was also consulted by the school about the proposed changes to the admission arrangements. The Code also states, in paragraph 1.37, that,

“Admission authorities **must** ensure any parents can easily understand how any faith-based criteria will be reasonably satisfied.”

The arrangements make clear that “Proof of conversion to Islam will be based upon a certificate...with an official stamp (from mosques / religious centres from the UK).” I consider this meets this requirement.

25. More broadly, paragraph 1.8 of the Code says that “Oversubscription criteria **must** be reasonable.” This means that the admission authority needs to show that it has provided reasons for the criteria and that those reasons are not irrational or illogical. Whilst it is clear that there is strong disagreement about the appropriateness of the reasons the admission authority has given for giving priority to children of alumni, those reasons could not be described as arbitrary or irrational. With respect to the priority of children of reverts, it is common practice for schools with a religious character to differentiate between adherents of the faith of the school in their admission arrangements, for example, on the basis of for how long or how often they attend a place of worship. It is not unreasonable to take account of when someone became a member of the faith (provided this can be established objectively) and to give their children priority for places at the school as they may need more support than children born into the faith. I therefore consider that these criteria meet the test of reasonableness.

Are the criteria fair?

26. My finding that the oversubscription criteria giving priority to the children of alumni and reverts do not of themselves breach the Code is not the end of the matter. I must also consider the effect of the introduction of these criteria, in particular that they give a higher priority than that for Muslim children who have a sibling at the school. The objectors are concerned that this might mean that some siblings will be unable to obtain a place at the school. One of objectors writes,

“I believe these changes will disadvantage parents from different socio- economic backgrounds and create hardship on parents with sibling priority more likely to lose out.”

The other objector makes a similar point:

“these changes will translate into clear hardship for larger and poorer families having to juggle several schools for the foreseeable future due to unfair changes.”

Echoing, to some extent, the wording of paragraph 14 of the Code, she expresses her opinion that “the Admissions Code stands for.... a fair chance for every child.”

27. Before considering the fairness of the arrangements, I need first to establish the likelihood of the effect that concerns the objectors, that is, that some siblings may not be admitted to the school. The PAN is 60. The determined arrangements provide for a maximum of 24 places (that is, 40 per cent of the total) to be allocated to the children of reverts and alumni. In each of the past two years, one place has been allocated to the child

of a member of staff and there have been no applications from Muslim looked after children or previously looked after children. Therefore, there will remain around 35 places available for siblings for admission in September 2021. That figure may be higher if there are fewer applications for the children of reverts and alumni than the number of places available under the third and fourth criteria. Indeed, the chair of governors expresses some doubt that all of the places for children of alumni will be taken up. Nevertheless, in my view, it is appropriate to consider the effect of the criteria on the basis that 25 places will be allocated under the first four oversubscription criteria.

28. During the consultation, the governing board provided the data in Table One.

Table One: Data provided by governing board relating to admission of siblings

Academic Year	Number of siblings who successfully applied for a YR place
2015-2016	45
2016-2017	30
2017-2018	18
2018-2019	44
2019-2020	18
Total	155

The table shows that over the five years from 2015-16 to 2019-20, the average number of siblings admitted was 31. It says, rightly, that the number of places available to siblings for admission in September 2021 exceeds this.

29. The average figure, though, masks very significant differences. For admission in 2015 and 2018, respectively, 45 and 44 siblings were admitted. In 2017, there were only 18 siblings admitted. It was subsequently clarified by the LA that the correct figure for 2019 was 26. For admission in September 2020, 21 siblings were allocated places. It is also important to note that for admission in 2018 and 2019, the school had a catchment area and gave priority first to siblings living in the catchment area, then to others living in the catchment area, followed by siblings living outside the catchment area. There were seven unsuccessful applications from siblings living outside the catchment area in 2018 and four in 2019. I have added this revised and additional data in Table Two.

Table Two: Demand for places from siblings

Academic Year	Siblings admitted	Siblings not admitted
2015-2016	45	
2016-2017	30	
2017-2018	18	
2018-2019	44	7
2019-2020	26	4
2020-2021	21	
Total	184	11

30. The data in Table Two shows that the demand for places from siblings over the past six years totalled 195, an average of 32.5. These figures lead me to conclude that there is a significant chance, although by no means a certainty, that there will be more than 35 siblings seeking admission to the school in September 2021. If this proves to be the case, and the maximum number of places set aside for children of reverts and alumni are filled, some siblings will not be allocated a place and will have to go to a different school. It may be that some of the children of reverts and alumni may be siblings of children at the school, although this possibility has not been mentioned by the parties to the case.

31. The difficulties faced by parents who have children attending different primary schools are obvious. Young children generally need to be accompanied to and from school. It is often almost impossible to ensure the prompt arrival and collection of children from more than one school, although before and after-school clubs may help in this respect. Primary schools regard strong relationships with children's families to be of great importance. Parents are generally encouraged to attend regular events at the school, often celebrating their learning and achievements (although the coronavirus pandemic will inevitably have caused restrictions). Informal conversations between parents and members of staff about children's progress and well-being, in classrooms or at the "school gate", are a feature at most primary schools. Such interactions become more complicated and, in many cases, cannot take place at all when siblings attend different schools.

32. The chair of governors points out that the removal of the catchment area with effect from admission in September 2020 has been beneficial to siblings. This is true, as all siblings are now within the same oversubscription criterion, including those who would previously have been "out of catchment." However, it remains the case that siblings furthest from the school will not be allocated places if oversubscription occurs within the fifth criterion, as priority is accorded on the basis of the distance of the home address from the school. The chair maintains that the arrangements are "absolutely fair to siblings who maintain a very significant priority under the current criteria." She says,

“the Admissions Authority is seeking to provide opportunities to the whole community and that we cannot have a school made up just of siblings. This Admissions Authority has been as diligent as possible in seeking balance and it is our view that having for example 300 parents supporting the school is better for it than having 200.”

33. The Code requires admission practices and criteria to be fair, but does not define the term. The assessment of the fairness of arrangements depends on the circumstances of the case; the key to making a judgment is to balance the benefits resulting from the oversubscription criteria against the disadvantage they may cause. I understand that there may be advantages to the school in admitting children of alumni, in terms of the knowledge of the school that parents bring, although the same could be said for parents of siblings, who are necessarily familiar with the school that their older child (or children) attend. I also recognise that the admission authority is seeking to assist families who may be vulnerable or socially isolated by giving priority to children of reverts, but I note that it is the objectors’ view that siblings who may be affected by the change to the admission arrangements often come from “poorer families.”

34. I consider that the potential disadvantages caused by the possibility of siblings not obtaining places at the school are profound. It is not my view that it is always unfair if siblings do not obtain a place at a school. If, for example, a school sets out to serve its local community and defines this with a catchment area, it may be that no unfairness is created if siblings living outside the catchment area are unable to obtain places, because those without older siblings but living in the catchment area have a higher priority. This is not the case for Islamia Primary School as it has no catchment area; principally, it uses faith-based admission criteria. I consider it is possible that the effect of the arrangements will be that siblings may not obtain a place at the school, as a result of the higher priority given to the children of reverts and alumni. In my judgment, the disadvantage to siblings and their families that such an outcome would cause outweighs the advantage the new criteria would bring to the school and the families who would benefit from them. This means that the arrangements are, in my view, unfair and do not comply with paragraph 14 of the Code. I uphold the objection in this respect.

35. For the avoidance of doubt, I should emphasise that my finding that the effect of the arrangements is unfair does not mean that I consider that any criteria giving priority to the children of alumni and reverts would be unfair. It is for the admission authority to decide how to change its arrangements to comply with my determination. It may, for example, decide to continue to use these criteria in its admission arrangements, but not give them a higher priority than that accorded to siblings or it may decide to reduce the number of places for which there is priority for children of alumni and reverts to a level which would remove any potential unfairness to siblings.

Possible discrimination

36. Before concluding I must mention a further, very important, argument advanced by one of the objectors. In her initial objection, this objector argued that the proposed changes “will directly impact families from poorer socio-economic backgrounds.” She develops the argument in subsequent correspondence, explaining that there has been a change in the demographic profile of the school, due to a large number of Somali families being housed in what was previously the catchment area. She says,

“This has translated into a net increase of Somali children and their siblings securing spaces at Islamia due to closeness to the school, being within the catchment area and having sibling priority. I believe these changes are aimed at reducing that through decreased sibling priority.

Moreover, since there are close to no Somali alumni from 20 years ago and traditionally no reverts from Somali heritage these changes will effectively exclude a large portion of parents and directly affect their ability to secure spaces for a second, third or fourth child. I believe these changes are discriminatory and aimed at curbing the access of poorer families from specific ethnic and socio-economic backgrounds usually in need of more spaces.”

37. On behalf of the admissions authority, the chair of governors rejects this argument:

“there is no factual basis for the complainants [sic] suggestion that the policy indirectly discriminates against and causes disadvantage to many local children from a specific ethnic and socio-economic background. The over subscription criteria give priority to the most local children to the school whatever specific ethnic or socio-economic background they are from.”

38. Data provided by the admission authority show that almost exactly half of the children admitted to YR in September 2018 and 2019 were Somali; they represented by far the largest ethnic group in these years of admission. The Code, in paragraph 1.8, stipulates that oversubscription criteria **must**,

“comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.”

39. I have found that the arrangements unfairly disadvantage siblings. Although the objector’s arguments appear to me to have some merit, it would be difficult to establish whether the effect of the proposed changes would be specifically to disadvantage the Somali racial group. Indeed, any finding in this matter would not add materially to my conclusion relating to unfairness. I therefore make no further comment, other than to stress the importance of the admission authority’s monitoring of the effect of the arrangements in future years to ensure that they do not run the risk of a successful challenge that they may cause indirect discrimination on the grounds of race. Indirect discrimination occurs when a

practice or criterion, which applies to everyone in the same way, has the effect of disadvantaging a group of people who share a protected characteristic listed in the Equality Act 2010. It is a defence against indirect discrimination if the criterion is a proportionate means of achieving a legitimate aim.

Other matters

40. With respect to the priority for children of staff, the chair of governors commented that “in line with our own ethos we consider all primary school children to be Muslim.” Nevertheless, she accepted that, in order to comply with the Code, it was necessary to have two separate oversubscription criteria for children of staff, as is the case for looked after children and previously looked after children, “based on if the parents are Muslim or non-Muslim.”

41. The admission authority also recognised that the process for requesting admission out of the normal age group was not made clear in the arrangements and promptly proposed appropriate wording to remedy this.

Summary of Findings

42. The consultation conducted by the admission authority prior to the introduction of new criteria prioritising the children of alumni and reverts met requirements. The criteria do not contravene paragraphs 1.9 e) and f) of the Code as they do not give priority to children on the basis of practical or financial support parents may give or on parents’ occupational or educational status. I do not uphold these aspects of the objection.

43. Children of alumni and reverts (up to 40 per cent of the total to be admitted) have a higher priority to siblings, some of whom might not obtain a place. The disadvantage to siblings and their families is not outweighed by the benefits the new criteria bring. The arrangements do not meet the requirements of fairness in paragraph 14 of the Code. In this respect, I uphold the objection.

Determination

44. 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 2021 determined by the governing board for Islamia Primary School, Brent.

45. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

46. 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: 25 September 2020

Signed:

Schools Adjudicator: Peter Goringe