



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3836

Objector: a parent

Admission authority: the governing board of Islamia Primary School, Brent, London

Date of decision: 5 January 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by the governing board of Islamia Primary School, Brent, London.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent (the objector), about the admission arrangements (the arrangements) for Islamia Primary School (the school), a primary school for children aged between 4 and 11 for September 2022. The school is a voluntary aided school with a Muslim religious character. The objection focuses on whether two of the oversubscription criteria in the arrangements are discriminatory on the grounds of race.
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 objector, the school, and the Association of Muslim Schools UK (the faith body).

Jurisdiction

3. The objector submitted his objection to these determined arrangements on 11 May 2021. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

4. The arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school. The school's arrangements were determined on 8 March 2021. (I have noted that this is later than the statutory deadline for the determination of arrangements, which was 28 February 2021. The late determination does not affect the status of the arrangements or my jurisdiction to consider them).

5. I raise the fact here that the arrangements for the school were subject to determination by another adjudicator on 25 September 2020. The determination covered two objections under case reference numbers ADA3721 and ADA3722. Those determinations are referred to at points in this determination. However, I should make clear that the previous determinations do not set a precedent and that I have considered the arrangements on their merits against the requirements set out in legislation and the Code. Other than changes arising from the previous determination on 25 September 2020, no changes were made to the determined arrangements for September 2022 compared to those which applied in 2021.

6. In terms of my jurisdiction, there are a number of issues raised in the detailed narrative of the objection which need to be addressed at this point:

- The objector raises concerns about the wider reasons why the oversubscription criteria forming the basis of the objection were originally introduced into the arrangements for the school in 2021. Much of these concerns were dealt with in the adjudicator's determination for ADA3721 and ADA3722. That will not be covered again in this determination, save for where it specifically relates to the concerns that are within my jurisdiction.
- The objector expressed concern that the arrangements for September 2022 entry are almost exactly the same as the revised criteria for 2021 entry, which were published following the adjudicator's previous decision relating to this school. The objector argues that, despite the adjudicator's decision, there have only been minimal changes in the revised criteria as compared to the criteria previously reviewed by the adjudicator in September 2020. The objector wanted to see more changes as a result of that determination. The adjudicator left the school to decide how to meet the outcome of that determination. I note here that in its response the school made three changes to its arrangements as a result of that determination:
 - Specified children of Muslim staff so that children of staff who are not Muslim do not have higher priority than non-Muslim looked after children (LAC) / and previously looked after children (PLAC).
 - Added a section about requesting admission out of the normal age group.
 - Reduced the alumni quota from 15 per cent to 10 per cent.

In any event, my jurisdiction is for the school's 2022 arrangements only and so this part of the objection is, therefore, not within my jurisdiction. However, reference is made to previous arrangements where necessary to provide context or background to the 2022 arrangements.

- The objector requested: "I am asking for the adjudicator to declare both [oversubscription] criteria c and criteria d to be contrary to the Schools Admissions Code and/or impermissible criteria to use in respect of the allocation of school places above siblings and local children." I can and will consider whether oversubscription criteria c. and d. fail to comply with the requirements of equalities legislation and the Code. These issues were not addressed in determinations ADA3721 and ADA3722 as they were not raised in the objections which resulted in those determinations. However, the relative priority given to siblings was considered extensively in the determination for case reference numbers ADA3721 and ADA3722. Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations provides that no objection may be referred to the adjudicator raising the same or substantially the same issues in relation to those admission arrangements within two years of the decision by the adjudicator. The relative priority given to siblings was dealt with in determinations made on 25 September 2020 and, therefore, this matter is not within my jurisdiction.

7. A revised Code came into effect on 1 September 2021. Since the objection and the responses to it were framed in terms of the 2014 Code, I shall use the references to it which have been made by the parties to the case and will indicate only if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

8. On the date the school's arrangements were determined, the Code then in force provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code has extended the level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the adjudicator and no reason for the school to send me its varied arrangements. I have made my determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements as set out above.

Procedure

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

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

- a. the objector's form of objection dated 11 May 2021, supporting documents and further submissions;
- b. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- c. a copy of the determined arrangements, which included the Supplementary Information Form;
- d. responses to the objection and supporting documents from the school, including copies of the arrangements from 2020 and 2021;
- e. the response to the objection from the LA;
- f. confirmation from the school of when consultation on the arrangements last took place and outcomes arising from the process;
- g. the Department for Education (DfE) publication 'The Equality Act 2010 and Schools';
- h. publication entitled 'Technical Guidance for Schools in England' relating to the Equality Act 2010 for schools published by the Equality and Human Rights Commission (EHRC);
- i. the Government's 'Get Information About Schools' website;
- j. the race discrimination definition page of the Equalities and Human Rights Commission (EHRC) website;
- k. publication entitled 'Somalis in London' by Open Society Foundations (2014); and
- l. papers arising from research undertaken by the Centre of Islamic Studies, University of Cambridge, entitled 'Narratives of Conversion to Islam in Britain' (male and female perspectives).

11. No submissions were received from the faith body in response to this objection.

12. In the copy of the arrangements sent to me, the term 'converts' is used when referring to those not born Muslim who make the choice to become a Muslim. On the website version of the arrangements, it refers to 'reverts'. The terms 'converts' and 'reverts' are used in different places throughout the documentation and in the responses from parties. It is not necessary for me to provide an explanation of the difference, but I do

record here the following points about the use of the terms: both will be used in the determination; the use of the term 'revert' will reflect the use of that term in the documentation and responses relevant to that point in the determination; and, where I am referring to that process without direct reference to documentation or responses, I will default to the term 'convert'.

The Objection

13. The objection is best understood in the context of the entirety of the oversubscription criteria in the school's arrangements, which can be summarised as follows:

- a. Looked after Muslim children and previously looked after Muslim children who meet the religious practice test.
- b. Children of Muslim staff.
- c. Muslim children of at least one parent who has converted to Islam (not born in the Islamic faith). Up to a maximum of 25 per cent (15 children) of the published admission number (PAN).
- d. Muslim children of parents who are former pupils of the school (alumni) since it became a voluntary aided school (post 1 May 1998). Up to a maximum of 10 per cent (6 children) of the PAN.
- e. Muslim children who have a sibling at the school or a sibling who is due to be attending this school at the proposed date of admission of the applicant.
- f. Other Muslim children who meet the religious practice test who do not have a sibling at the school or a sibling who is due to be attending this school at the proposed date of admission of the applicant.
- g. Any other looked after or previously looked after children.
- i. Any other children.

(Note: there is no oversubscription criterion h. in the list, and it is likely that i. should be h. However, the labelling of each criterion is represented above as it is in the arrangements. The school should address this issue (it is allowed under paragraph 3.6 of the Code for such changes to be made without reference to the adjudicator when there is a "... misprint in the arrangements") in order that the requirement for the arrangements to be clear, under paragraph 14 of the Code, is met).

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.

14. Oversubscription criteria c. and d. were first 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.

15. The objector is objecting to the school's arrangements on the basis that they are directly discriminatory, contrary to section 13 of the Equalities Act 2010, and indirectly discriminatory, contrary to section 19 of the Equalities Act 2010, in relation to discrimination on the grounds of race. The objection is made with reference specifically to oversubscription criteria c. and d.

16. The objector asserts being Somali is part of the definition of race, a protected characteristic covered under Section 9 of the Equality Act 2010. The Equality and Human Rights Commission (EHRC) state on their website:

"In the Equality Act, race can mean your colour, or your nationality (including your citizenship). It can also mean your ethnic or national origins, which may not be the same as your current nationality."

In correspondence, the objector stated:

"I suppose, given that I live in Britain, it would be fairer to say that the school is discriminating against British Somalis as opposed to Somalis more generally, as Somalis live all over the world. British Somalis are all Muslim, as are Somalis living in Somalia or elsewhere in the world."

For the purposes of this determination, I have taken the use of the term Somali to mean those with Somali heritage who make applications for places at the school.

17. The objector believes that oversubscription criterion c. is both directly and indirectly discriminatory on the grounds of race. Specifically, he argues it discriminates against the admission of those of Somali heritage in that:

"There only a handful of non 'born' Muslims in Somalia and thus a miniscule amount (and in reality probably none) amongst those of Somali heritage in the UK. The chances of any non-Muslim Somali in the UK converting and thus their children being eligible for a place under the policy [that is under criterion c.] is non-existent".

In explaining his belief that oversubscription criterion c. is discriminatory, the objector expresses his concern that the position on the list of oversubscription criteria guarantees places to 'at least 15 children of converts at the school in any one year', directly after those criteria which deal with LAC / PLAC (oversubscription criterion a.) and children of Muslim staff where the member of staff has been employed at the school for two or more years at the time at which the application for admission is made (oversubscription criterion b.). The objector goes on to state that, over time, the effect will be far greater than the 15 children of converts, as the siblings of those children will have priority over the children of local pupils and will be competing with siblings of non-converts for places (this relates to oversubscription criterion e.). The objection records that:

"The policy thus directly discriminates against those of Somali heritage, as criteria (c) effectively reserves a quarter of the places (at present – and more in future years) at the school for those who are not of Somali heritage. That is not lawful."

18. In relation to oversubscription criterion d., the objector believes that this is indirectly discriminatory against applicants of Somali heritage. The objector states:

“Seeking to prioritise [children of] alumni (criteria (d)), who would have been pupils at the school (for the most part) 15-25 years ago, when the demographic make up of the school was very different and giving them priority above siblings and local children is also indirectly discriminatory. The Somali population in the area is a relatively recent phenomenon. There are thus few (if any) pupils of Somali heritage amongst alumni of the school old enough to have children who are in a position to attend it. This thus is another criteria which is indirectly discriminatory. And this applies to all, but those of Somali heritage are far less likely to be able to meet it. ... As above with the criteria prioritising the children of converts, over time the effect will be greater than the 6 children of alumni under the criteria, as the siblings of those children will have priority over the children of local pupils, and will be competing with siblings of non-converts for places.”

19. I note here my disagreement with the objector’s assertion that all Somalis and all British-Somalis are Muslim and therefore cannot be converts. Whilst it is the case that the main religion in Somalia is Islam, it is not the case that everyone in Somalia is a Muslim. Additionally, according to the publication entitled ‘Somalis in London’ by Open Society Foundations, there is a long history of Somalis living in the UK. The largest group of Somalis residing in London is in Brent. The publication states that the ‘vast majority’ of British-Somalis are Muslim but does not say that they all are. It is entirely possible therefore that some applicants for places at the school are made by converts who are of Somali heritage. Additionally, given the long history of Somalis in Brent, it is unlikely that it would be the case that they could not be current alumni of the school.

20. The objector raises concerns in relation to the arrangements for 2022, and the effects of the two criteria that form the focus of the objection over the longer term. I intend to look at these concerns raised separately, and will structure my response in this determination into the following two areas:

- Concern 1: evidence of discrimination.
- Concern 2: the effect of the criteria over the longer-term.

I will use these as headings to structure my response in this determination.

21. The objector believes the arrangements contravene the Equality Act 2010. The relevant parts of that Act are defined later in the determination. No reference was made by the objector to specific parts of the Code that he believes are relevant to his objection. The concerns raised are covered by two paragraphs:

- 1.1: “Admission authorities are responsible for admissions and must act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions, and relevant human rights and equalities legislation”; and

- 13: “Admission authorities and local authorities **must** also comply with the regulations and legislation set out in the Appendix to this Code”. (The Appendix includes, amongst others, the Equality Act 2010).

I refer to other paragraphs of the Code where relevant in the consideration of the case.

Background

22. The school is a primary school for 4 to 11 year old pupils located in the London Borough of Brent. The school opened in 1983 as an independent school. It became a maintained school (voluntary aided) in 1998. The school is the only Muslim school catering for primary aged children in Brent (the nearest outside the borough being Barnet Hill Academy in Barnet). The PAN for admission to the reception year (YR) in September 2022 is 60. Historically, the school has been oversubscribed. In the LA’s response, it was recorded that:

“... given the past and current popularity of the school, there is no existing reason to believe that the school will be undersubscribed at any time between 2022 and 2024 ...”

23. I note here the description of itself given by the school in its response to the objection:

“... Islamia Primary School ... is a faith school and operates within the parameters of the teachings of the Qur’an (holy book) and the Sunnah (exemplary practices of the Prophet Mohammed (peace be upon him)) in accordance with the school’s mission statement:

To strive to provide the best education in a secure Islamic environment through the knowledge and application of the Qu’ran and Sunnah.

... The school community we are promoting is seamless and beyond colours and nationalities. Islamia Primary School celebrates these Islamic values and encompasses the parallel British values in a natural and harmonious way.”

Consideration of Case

Concern 1: evidence of discrimination

24. The objector asserts that oversubscription criterion c. directly discriminates against those of Somali heritage. Given the DfE’s guidance to schools on the Equality Act 2010 states that direct discrimination “... describes the most clear-cut and obvious examples of discrimination”, I intend to deal first with the concern raised in this respect.

25. Section 13 of the Equality Act 2010 deals with ‘direct discrimination’ and provides so far as is relevant here:

“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

26. The EHRC’s technical guidance to schools states:

“Having [admissions] criteria that exclude people with a particular protected characteristic will be direct discrimination, which is always unlawful”; and

“Direct discrimination occurs when a school treats a pupil less favourably because of a protected characteristic than it treats, or would treat, another pupil. So a very basic example would be refusing to admit a child to a school as a pupil because of his or her race...”.

27. In the school’s response to the objection, it stated:

“... The understanding of the admissions committee is that the term ‘Somali’ refers to a nationality and not a race and similarly to the point above, nationality is also not a question when considering applications for places at the school. The policy document and the supplementary information form do not ask questions related to either nationality or race as they are of no concern to the Admissions Authority.”

I pause here to note that, notwithstanding the understanding of the admissions committee, nationality falls within the definition of race in the Equality Act 2010.

28. For the school’s arrangements to discriminate directly against Somalis, they would need to provide that lower priority would be given to Somalis or a higher priority to those of other races. The arrangements do not do that (and would certainly be unlawful if they did). Oversubscription criterion c. is not a race-based criterion. It is a faith-based criterion in which priority is afforded to applicants who have at least one parent that has converted to Islam. Schedule 11 to the Equality Act 2010 exempts schools designated with a religious character from the requirement in Section 85 of the Equality Act 2010 not to discriminate on the grounds of religion in terms of the admission of pupils to the school. Paragraph 1.36 of the Code states: “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.” There is no such exemption with respect to race in relation to admission of pupils to schools. The Equality Act 2010 explanatory notes (Part 2: Religious or belief-related discrimination) make this clear:

“It [the exception on the grounds of religion] does not allow faith schools to discriminate because of any other of the protected characteristics, such as sex, race or sexual orientation...”

A Muslim school may give priority to Muslim pupils when choosing between applicants for admission (although the Admissions Code will not allow it to refuse to accept pupils of another or no religion unless it is oversubscribed). However, it may not discriminate between pupils because of any other of the protected

characteristics, such as by refusing to admit a child of the school's own faith because she is black or a lesbian."

29. Whilst oversubscription criterion c. does directly discriminate, it does so on religious grounds. The school is able to discriminate in this way because Schedule 11 to the Equality Act 2010 allows for that. Oversubscription criterion c. concerns itself solely with Muslim applicants who have one parent who has converted to Islam. The criterion does not, therefore, amount to direct discrimination on the grounds of race and I, therefore, do not uphold that part of the objection.

30. That is not the end of the story. It is possible that a criterion based on religion could amount to indirect discrimination on the grounds of race and, indeed, the objector is concerned that both oversubscription criteria c. and d. are indirectly discriminatory. Section 19 of the Equality Act 2010 deals with 'indirect discrimination' and provides so far as is relevant here:

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

31. The DfE guidance document "The Equality Act and Schools" published in 2014 explains that:

"Indirect discrimination occurs when a "provision, criterion or practice" is applied generally but has the effect of putting people with a particular characteristic at a disadvantage when compared to people without that characteristic.... It is a defence against a claim of indirect discrimination if it can be shown to be "a proportionate means of achieving a legitimate aim"."

32. In respect of the latter part of that definition, the term 'objective justification' is used to describe a situation defined by the EHRC as one which is used to "...give a defence for applying a policy, rule or practice that would otherwise be unlawful indirect discrimination. ... To rely on the objective justification defence, the employer, service provider or other organisation must show that its policy or ... rule was for a good reason – that is 'a

proportionate means of achieving a legitimate aim". This means both that the reason for the rule or practice is legitimate, and that it could not reasonably be achieved in a different way which did not discriminate.

33. In relation to the matters raised, the objector did not provide data or other evidence to support his concerns. My starting point, therefore, was to look for any evidence that the school's arrangements have had an effect on the numbers of those admitted with Somali heritage in previous years such that it might be indicative of indirect discrimination in the arrangements for 2022. To do that I have evaluated the data that the school provided for the past five years. I have organised that data into Tables 1 and 2 below.

Table 1: Numbers of students admitted in the last five years classified by ethnicity

Ethnicity Classification (As used by the school)	2017	2018	2019	2020	2021
Afghan	0	1	1	1	0
African Asian	0	0	0	0	1
Arab	4	6	5	10	9
Asian and any other ethnic group	1	3	9	4	2
Asian and Black	0	0	1	0	0
Bangladeshi	2	2	0	1	0
Black – Caribbean	0	0	0	1	1
Black – Somali	35	31	27	30	26
Black – Sudanese	2	0	0	2	0
Egyptian	1	2	0	0	1
Indian	0	2	0	0	2
Iraqi	0	1	0	1	0
Kashmiri Pakistani	0	0	1	0	1
Kosovan	0	0	1	0	0
Lebanese	0	0	0	0	1
Moroccan	2	2	0	0	2
Other – Asian	0	0	2	3	1
Other - Black African	0	0	4	0	8
Other - Mixed Background	1	0	1	2	0
Other – Pakistani	1	9	5	2	2
Other - Sri Lankan	1	0	0	0	0
Sri Lankan Tamil	0	0	0	0	2
White and Black Caribbean	0	1	0	0	0
Information Not Yet Obtained	0	0	1	2	1
Unspecified	10	0	2	1	0
Total =	60	60	60	60	60

Table 2: Number of applicants admitted under each of the oversubscription criteria in 2021

Oversubscription Criteria	Number of applicants admitted in 2021
a.	0
b.	1
c.	1
d.	6
e.	50
f.	2
g.	0
i.	0

34. Oversubscription criteria c. and d. were first introduced in 2021 and so that is the only year in the dataset where it is possible to see if their introduction has impacted the numbers of applicants with Somali heritage being admitted to the school. The data in Table 1 show that the school has a diverse intake, though the largest group in every one of the five years – a range of between 43 and 58 per cent – has been of those of Somali heritage. In 2021, 26 pupils of Somali heritage were admitted, which was 43 per cent of the intake. When compared with data from the previous four years, it is evident that 2021 was the lowest intake of pupils of Somali heritage, though only one less than the intake in 2019. The figures over the five year period show a yearly fluctuation of between three to four pupils of Somali Heritage being admitted (with all but one year being a decrease, therefore creating a downward trend for the period covered by the figures). However, the data provide clear evidence that those reductions have been taking place prior to 2021. The reduction in numbers of those of Somali heritage gaining places at the school over the five year period is indicative that there are other factors that have had an impact on reducing the intake of those of Somali heritage and cannot be attributed to the matters raised by the objector. I note, for example, that the numbers of children of Arab heritage and of Other – Black African heritage have increased in recent years. The number of children of Arab heritage rose from 5 in 2019 to 10 in 2020 and cannot have been affected by the priority first introduced in 2021 for children of converts and of alumni.

35. Table 2 records that although six admissions were made under oversubscription criterion d. (out of a possible six places for alumni), only one pupil was admitted out of the 15 places available under oversubscription criterion c. (converts). Combined, these seven pupils are only just under 12 per cent of admissions in 2021. The numbers of pupils of Somali heritage fell by four between 2020 and 2021. No evidence of a correlation between the reduction in the number admitted under oversubscription criteria c. and d. in 2021 has been provided by the objector or can be determined from the data in Tables 1 and 2.

36. Paragraph 1.8 of the Code, states (in part): "... Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group ...". The objector has not provided any data to evidence the discrimination that concerns him in relation to the arrangements for 2022.

Looking at the data in Tables 1 and 2, I am unable to find evidence that oversubscription criteria c. and d. have had an effect on the admissions to the school in 2021, such that the criteria could be considered to constitute indirect discrimination on the grounds of race, and which would then indicate this would be an issue for the arrangements in 2022. I therefore do not uphold that part of the objection.

37. Before moving onto looking at Concern 2, I wanted to take the opportunity to make a final point on oversubscription criterion c. In the determination of 25 September 2020 (for case reference numbers ADA3721 and ADA3722), the adjudicator stated:

“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.”

38. In response, the school chose to reduce the number of places available to children of alumni under oversubscription criterion d., but not to reduce the number of places available to children of converts under oversubscription criterion c. In their response to the objection, the school explained the reason for this:

““The Yusuf Islam Foundation which is the umbrella body of Islamia Primary School was founded by Yusuf Islam formerly known as Cat Stevens who reverted to Islam at the height of his music career. Despite being a celebrated and highly respected individual he is fully aware of the vulnerability of reverts as they face hardships and challenges not just from their heritage community but also unfortunately, from the Muslim community. Many studies have been carried out which show the negative impact on reverts when they become isolated and no longer have access to a support network.

Furthermore, support for reverts has always been an important aspect of the admissions process at Islamia Primary School as it was and remains an aspect that is very close to the heart of the Yusuf Islam Foundation. It is nothing new. Reverts were considered a priority group with a specific number of points awarded to the applicant in this category. It was only when the point system was extensively reviewed and eventually terminated that the revert category was ‘lost’ in the process and has now been reinstated as part of the admission policy, as opposed to a measure of practice in the supplementary information form.

Just as the Admissions Code sets out to protect and positively discriminate in favour of vulnerable members of society such as for example Looked after Children, in the same vein the Admissions Authority has long been aware of the vulnerability of

reverts and their children and seeks to support them. Unquestionably, the Admissions Authority aims to follow the Code to the letter but also has an obligation to the Yusuf Islam Foundation. The reasoning is that by attending Islamia Primary School the pupils who obtain a place through this criterion will be able, with their family to build up a strong network of friends and overall support. They will also have access to knowledgeable members of staff, including the Pastoral Co-ordinator and a robust signposting service to help them both spiritually, emotionally and with material matters.”

39. The objector objects to having oversubscription criterion c. at all. However, paragraph 1.10 of the Code states: “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances. ...” There are a number of studies into the problems that converts to Islam face (such as those detailed in papers from the Centre of Islamic Studies, University of Cambridge). It is clearly an issue that is not only relevant to Muslims, but particularly to a school founded by a convert who would have experienced the issues the school aims to address through having oversubscription criterion c. in its arrangements. The objector asserts that it is harder for Somalis to satisfy the convert test than it is for other races. This may be the case, but I have not been provided with information about the rates of conversion among the other races of the pupils who are part of the diverse population of this school in order for that assertion to be tested. If what the objector asserts is true, I nevertheless consider that the school’s aim – to support converts – is a legitimate one and determine that affording some priority to this group in the arrangements is a proportionate way of achieving this aim. Ultimately, it is for the admission authority to decide their arrangements, as long as those arrangements meet the requirements of the Code. I find that the arrangements for 2022 are compliant with the Code in this respect.

40. The 2021 admission data record that there is a convert who wished for their child to go to the school and the school may feel that this vindicates the presence of oversubscription criterion c. their arrangements. Conversely, this shows that it might be not an issue that necessitates 15 places being allocated in the school’s arrangements. In respect of the school not reducing the number of places allocated to oversubscription criterion c. in response to the determination on 25 September 2020, there appears to me not to be a problem of discrimination, but one of perception.

41. The school stated in its response that:

“The Admissions Authority takes its responsibilities very seriously and will continue to monitor and consider making changes in line with the advice offered by the Adjudicator, as and when necessary.”

It is welcome that the admission authority is to keep the number of places allocated under oversubscription criterion c. under review. The school views oversubscription criteria c. and d. as ones which reflect core commitments. However, it might be that the numbers admitted under oversubscription criterion c. may continue in the future to indicate that there are not

as many converts in the local community wanting school places for their children as the priority afforded such children might suggest. As part of its ongoing review, the admission authority should consider whether the number of places allocated under oversubscription criterion c. is at a level which reflects the need. By undertaking a process of calibration, the school will be able to balance meeting its aim to support converts and their children, with the perception of the local Somali community that those commitments are having a detrimental effect on the admissions of those who are not converts.

Concern 2: the effects of the criteria over the longer term

42. I turn now to the matter raised by the objector in respect of the longer term effects of the arrangements on admissions for those of Somali heritage. I do so in the context that the arrangements for 2022 are part of that longer term concern, though the arrangements for years beyond 2022 are not within my jurisdiction. The objector's concern is that, over time, the effect of the arrangements will be far greater than the 15 children of converts and six children of alumni, as the siblings of those children will have priority over the children of local pupils and will be competing with siblings of non-converts for places.

43. I have found that, in respect of the arrangements for 2022, there is no evidence of direct and indirect discrimination arising from the application of the arrangements for 2021 which have the same oversubscription criteria. The objector's view is that there will be an impact of the criteria on admissions over a longer period of time and that that is discriminatory. I note the school's response to this matter here:

“Just as the objector mentions the advantage to alumni who were pupils at the school 15-25 years ago, in the same way, less than 10 years from now the current pupils will be Alumni and be able to take advantage of criterion d.”

44. It is simply not possible to determine at this stage what will happen in the future, and it is not in my jurisdiction to deal with matters beyond 2022. However, I noted earlier that the school intends to keep the arrangements under review. In Appendix 1 of the Code, paragraph 7 states: “Admission authorities are also subject to the Public Sector Equality Duty [PSED] and therefore **must** have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.” The broad purpose of the PSED is to integrate consideration of equality and good relations into the day-to-day business of public authorities.

45. When determining its arrangements in the future, the school should remind itself of the point made by the adjudicator in the determination made on 25 September 2020:

“I ... 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.”

46. Whilst the PSED does not specifically require the carrying out of a formal Equality Impact Assessment, it does require an admission authority to consider the impact of a potential change in its admission arrangements in order to determine whether there will be any adverse impact upon applicants who share any of the protected characteristics. It is not clear from the school's response or the governing body minutes at which the arrangements were determined whether such issues were considered. The school must bear in mind its obligations under the PSED going forward, taking into account the concerns of the Somali community as raised in this objection, and who form the largest part of its intake each year.

Summary of Findings

47. The objector asserts that it is harder for Somalis to satisfy the convert test than it is for other races. The objector provided no data to evidence this concern. Admission data from the school for 2021 show that the numbers of those of Somali heritage being admitted to the school were at the lowest point in the last five years, though only one less than in 2019. The trend in admissions of those of Somali heritage over the period 2017 to 2021 indicates that there are likely to be reasons for the reduction in the numbers admitted other than those raised by the objector. I have found that there is no evidence that the arrangements for 2022 are directly or indirectly discriminatory on the grounds of race (though the arrangements do discriminate lawfully on the grounds of religion under Schedule 11 of the Equality Act 2010 and in line with paragraph 1.36 of the Code). I have found that the arrangements for 2022 are compliant with the Code, specifically paragraphs 1.1, 1.3 and 1.8. If what the objector asserts is true, I nevertheless consider that the school's aim – to support converts – is a legitimate one and determine that affording some priority to this group in the arrangements is a proportionate way of achieving this aim.

Determination

48. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by the governing board of Islamia Primary School, Brent, London.

Dated: 5 January 2022

Signed:

Schools Adjudicator: Dr Robert Cawley