Office of the Schools Adjudicator

**Case reference:** **ADA3781**

**Objector:** **A member of the public**

**Admission authority:** **The Governing Board of Yesodey Hatorah Senior Girls School, Hackney, London**

**Date of decision:** **10 January 2022**

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the Governing Board for Yesodey Hatorah Senior Girls School, Hackney, London.**

**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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised in relation to the published admission number for the normal year of admission no later than 21 January 2022, and in relation to other changes which are required no later than 28 February 2022.**

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the objector), about the admission arrangements (the arrangements) for Yesodey Hatorah Senior Girls School (the school), a voluntary aided school for girls aged 11 to 16 (but which has offered places for girls in years 5 and 6 since 2019) for September 2022. The adjudicator approved the request of the school to vary the arrangements to no longer offer places in these primary years in September 2022 in VAR2118 (30 November 2021). The objection is to:

(i) A possible breach of equalities legislation

(ii) The reasonableness of the arrangements

(iii) The clarity of the arrangements

(iv) The objectivity of the arrangements

(v) The procedural fairness of the arrangements

(vi) Whether the arrangements employ criteria which are used to give priority to applicants which are not religious activities.

2. The local authority (LA) for the area in which the school is located is Hackney London Borough Council. The LA is a party to this objection as are the objector and the school's governing board. The other party to the objection is the Rabbinate of the Union of Orthodox Hebrew Congregations (the UOHC), which is the school's religious authority.

## 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 objector submitted their objection to these determined arrangements on 12 April 2021. The objector has asked to have their 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 (the Regulations) by providing details of their name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). At the time of the determination of the school's admissions arrangements and at the time the objection was made, the Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which means that the 2014 Code no longer has any effect.

5. The arrangements for the school as set out in this determination were originally determined on 27 January 2021. At that date the 2014 Code 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).

6. The new Code which came into force on 1 September 2021 extended the same 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, and this therefore means those determined for admissions in 2021 and those for admissions in 2022. There was no requirement for these variations to be approved by the adjudicator and no reason for the school to send me its varied arrangements.

7. I have made my determination in this case on the basis that the admission authority would have varied its arrangements in order to comply with the new requirements set out above, but that it has awaited the outcome of this determination before considering all the changes which it is under a duty to make in order to comply with the requirements of the Code and legislation. Since the objection and the response 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 but will indicate if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

8. I note here that the term Charedi, which will appear throughout this determination, is sometimes spelt “Chareidi”, and sometimes is in lower-case. I shall use the spelling and form provided when quoting from documents sent to me by the parties. Otherwise, I will use “Charedi”.

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

a) the objector’s form of objection dated 12 April 2021 and subsequent correspondence;

b) the school’s, the LA’s and the faith body’s responses to the objection, and supporting documents together with subsequent correspondence;

c) copies of the minutes of the meeting of the governing board at which the arrangements were determined; and

d) a copy of the determined arrangements.

I have also taken account of information received during a meeting I convened on 18 November 2021 attended by representatives of all the parties, other than the objector, who was invited to attend but chose not to do so.

## The Objection

10. When completing the form of objection, the objector quoted the first sentence of paragraph 18 of the Code, which says:

“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation, including equalities legislation.”

It was the objector's view that the arrangements variously failed to comply with these requirements in the following ways:

(i) Equalities legislation

The arrangements contain a dress code for parents that is entirely to do with "women's modesty", in the words of the objector, whereas the community which the school serves also has a similar dress code for men.

(i) Reasonableness (and objectivity)

The supplementary information (SIF) form asks a Rabbi to countersign to verify parental statements on matters that they would not have sufficient information on, such as that time is set aside for Torah study or that the family has no television at home. The objector says that this makes the SIF unreasonable and also lacking in objectivity.

(ii) Clarity

The SIF asks parents questions which are not clear, for example about "bright" clothing, and the word "bright" is not defined

(iii) Objectivity

The SIF requires a Rabbi to sign to confirm synagogue attendance. The objector says that this attendance is not monitored or logged and so the arrangements are not objective in nature.

(iv) Procedural fairness

The objector says that "a very limited number of (elderly) Rabbis" are eligible to sign [the SIF] whereas "the school's target demographic is the Charedi community of Stamford Hill", and that while these families attend "one of several dozen synagogues, all of which are affiliated with the UOHC… many will have no connection with ….the Rabbis who are members of the UOHC Rabbinate". The objector says that this makes the arrangements unfair because a family may "keep all the rules" yet be unable to obtain a confirmatory signature on the school's SIF from a Rabbi.

11. The objector also referred to paragraph 1.9i of the Code, saying that this "only allows religious schools to limit access based on religious practice" whereas the arrangements refer to matters (such as the wearing of clothes made from leather or denim) which are "not based on Jewish law, rather more recent cultural practice."

## Other Matters

12. When I considered the arrangements as a whole it appeared to me that the following matters also do not, or may not, conform with the requirements of the Code, as follows:

(i) Paragraph 1.37 concerning the priority given to looked after and previously looked after girls “of the faith”;

(ii) Paragraph 14 concerning the clarity of:

a. the dates given for the maintenance of a waiting list, concerning admissions to Years 6 and 7 and concerning in-year applications;

b. the use in the arrangements of Hebrew script generally;

c. the requirement in the supplementary information form (SIF) set out as:

“Member and regular [Hebrew script] of a Charedi [Hebrew script]“ where both the term “regular” and the matters referred to are unclear;

d. the reference to the availability in Years 6 and 7 of “up to 65 places” as the published admission number (PAN) set for the school’s relevant age group (Year 5) does not apply to such admissions, and

e. the reference in the arrangements to social media, which does not include wording agreed when the arrangements were determined.

(iii) Paragraph 2.4 concerning information collected via the SIF which has no bearing on the application of the oversubscription criteria (name of shul, name and contact details of Rav).

13. The meeting which I held with the parties concerned both this case and the school’s request that these arrangements be varied by removing the availability of places in Years 5 and 6. At that meeting I raised the possibility that a continued PAN of 65 for the normal year of admission (which will become Year 7 as a result of the school’s requested variation) may not be reasonable in the light of the demand for places for this year group locally. This demand had become evident during my consideration of the requested variation, and I set out in my determination of it my intention to consider further the matter of the reasonableness of the PAN for Year 7 as part of my consideration of the arrangements as a whole in this case.

## Background

14. A previous determination in 2018 (ADA3361), which has been referred to in correspondence from the parties, considered an objection to the school’s admission arrangements for September 2019. The adjudicator in that case set out the school’s background as a former independent school which has been a voluntary aided school since 2005, established by the Orthodox Jewish Charedi community in Hackney, London. Although providing for girls aged 11 to 16, since September 2019 it has also offered places to girls in Years 5 and 6. I have considered in a separate determination (VAR2118) the school’s request that its arrangements for September 2022, which are the subject of this objection, be varied by removing the availability of these primary age-group places.

15. The arrangements, as determined by the governing board on 27 January 2021 and provided to me by the school, say in summary the following:

a. That the school “exists to meet the needs of Charedi Jewish families who desire a Charedi Jewish education for their daughters.”

b. That for applicants “who wish to be considered under the religious oversubscription criteria 1-3” (see below) “Charedi Jewish girl” means “a girl who is a member of a Charedi family” (“family” is defined in the arrangements), and that “the definition of Charedi is as follows:

“ A distinct group within the Jewish community distinguished by cultural differences and strict adherence to and practice of Orthodox Judaism. All members of this community lead an extremely modest way of life dictated by the highest moral and ethical values. Every aspect of their lives is governed by the codes of Torah observance, and is based on the three tenets of Judaism ‘Torah, Prayer and Acts of loving kindness’.”

c. That “Charedi principles and ethics” require the following:

“Charedi homes do not have TV or other inappropriate media, and parents will ensure that their children will not have access to the Internet and any other media which do not meet the stringent moral criteria of the Charedi community. Families- mothers and girls will dress at all times in accordance with the strictest standards of Tznius (modesty) as laid down by the Rabbinate of the Union of Orthodox Hebrew Congregations. Fathers, where applicable, overall mode of dress style and colour will be in accordance with the Chareidi ethos of the school; must pray at a Chareidi synagogue and attend all prayers on Sabbos, Yom Tov and the three daily prayers. Likewise, attendance in synagogue appropriately dressed i.e. jacket and hat. Set times for daily Torah study sessions [Hebrew script removed] are an essential part of a chareidi family environment.”

d. That parent/guardians are expected “to refrain at all times from the following trends”, which is followed by a set of descriptions concerning clothing, make-up, other forms of adornment (sheitels) and access to certain forms of entertainment, which include:

(i) “The wearing of very brightly coloured clothing is forbidden” and

(ii) a statement concerning television and internet access which does not conform with the wording set out in the minute of the governing board at which the arrangements were determined (where the addition of a clarifying sentence had been approved which has not been added).

e. Year 5 is described as the normal point of entry to the school, and a PAN of 65 is given. After the admission of children whose Education, Health and Care Plan or Statement of Special Educational Need names the school, the following oversubscription criteria are used to determine admissions if there are more applications than places available:

(i) Charedi Jewish girls who are looked after or previously looked after children (as defined)

(ii) Charedi Jewish girls with a sister (as defined) at then school at the time of application

(iii) Other Charedi Jewish girls

(iv) Other girls who are looked after or previously looked after children

(v) Other girls

f. Those wishing to be given priority because they are Charedi Jewish are asked to complete a SIF, and the arrangements state that "Any disputes as to whether a child is Charedi will be settled by reference to the Rabbinate of the Union of Orthodox Hebrew Congregations."

g. A statement is made that "The governing body (sic) will offer up to 65 places in each of year 6 and 7 …including children transferring from years 5 and 6."

h. Guidance notes on the SIF asks parents to complete it and to forward it to the UOHC "where the Rabbonim will countersign to confirm that the parents/guardians adhere to every part of the guidelines."

i. The SIF asks for details of the child, and those of a parent/guardian. Included in the latter are the questions:

"Name of shul [synagogue] you are affiliated with", "Name of your Rav[Rabbi] " and "Contact details of your Rav".

j. The SIF then sets out again the descriptions of clothing, make-up and adornment as in the main body of the arrangements, but contains a fuller statement concerning access to the television and internet. It then asks applicants to provide a signature against each of 16 statements which confirm adherence to these requirements, and against each of these provides a second space for the countersignature of a member of the Rabbinate of UOHC attesting to the fact that the parent/guardian does so adhere. One of the 16 statements is set out as:

"Member and regular [Hebrew script] of a Charedi [Hebrew script]".

k. The arrangements themselves use Hebrew script 8 times, and the SIF does so 17 times.

16. I note here that the objector provided me with a copy of a slightly revised set of admission arrangements for the school which were to be found on its website on 1 November 2021. The changes which had been made included corrections to the dates referred to above, the additional sentence referring to internet usage referred to above, a new sentence concerning sheitels (wigs) and an addition to the instructions concerning the SIF asking applicants not to give them to individual rabbis to be signed. I asked the school to provide me with evidence of the determination of these revised arrangements. In response, it provided me with a copy of the minutes of a meeting which took place on 13

July 2021 at which Governors agreed the insertion into the arrangements of a clarification of the requirements concerning sheitels, which uses words which have been set out in the guidance from the UOHC which was sent to me following my meeting with the parties. No reference was made to the other changes which have been made to the arrangements as originally determined, and although the school is able to make these other changes because they have either already been agreed, are clarifications or because they correct misprints concerning dates, the minutes do not record that this is what in fact happened. The school will now need to amend its arrangements again in order to comply with this determination, and with the requirements of the new Code to which I referred earlier.

## Consideration of Case

17. I believe that it will be helpful if I set out as a background the framework of requirements in legislation and elsewhere which are relevant to this case, particularly as these apply to guidance to the school's admission authority from its religious authority.

18. Section 10 of the Equality Act 2010 prohibits discrimination on the grounds of religion or belief (generally), and section 85(1) of the same Act applies this prohibition (as well as those arising from other protected characteristics such as disability) to schools concerning admissions. Section 89(12) then applies exceptions to these requirements, and these are set out in Schedule 11 to the Act. Paragraph 5 of Schedule 11 disapplies section 85(1) "so far as relating to religion or belief " to any school designated by the Secretary of State under section 69(3) of the School Standards and Framework Act 1998 as having a religious character. So, such a school may discriminate on the grounds of religion or belief in the arrangements it makes for deciding who it admits as a pupil.

19. Regulation 34 and Schedule 3 of the Regulations provide the names of the bodies or persons representing the religion or religious denomination for the school. In the case of the school this is the UOHC. Paragraph 1.38 of the Code requires the admission authority for a school which is designated as having a religious character to "have regard to any guidance" from its relevant body when constructing faith-based admission arrangements "to the extent that the guidance complies with the mandatory provisions and guidelines" of the Code. 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)".

20. The meaning of "laid out" was considered in the case of Governing Body of the London Oratory v The Schools Adjudicator [2015] EWHC 1012(Admin) in which the judge (Cobb J) said that:

"the phrase "laid out" means specifically 'laid out' in schools admissions guidance published by the religious authority – ie specifically provided for or authorised by such guidance."

The judge did not expand on what he meant by "published" in this context, but my understanding is that it means that the guidance has been provided in a form which makes it generally known and available. This would most commonly be in written form and could include publication in hard copy or online. It is also my understanding that the use of the phrase "religious activities" in paragraph 1.9i of the Code encompasses all those things that a person might do actively to practise a faith.

21. It is therefore of central importance that a school with a religious character should be able to evidence that any religious activities which it uses in order to discriminate between applicants for admission are "specifically laid out" in guidance from its religious authority. The existence, and the detail, of such guidance touches on a number of the matters before me in this case.

The Guidance Provided to the School by its Religious Authority

22. The arrangements refer in a number of places to matters of religious observance which have been specified by its faith body, the Rabbinate of the UOHC, and in one place to "guidelines issued by the Rabbinate of UOHC in Elul 5572". I therefore asked the UOHC to provide me with the documents in which written guidance had been given to the school, and in particular with the document "Elul 5572". The response of the faith body assured me that "the Charedi criteria and definitions set out in the current admission arrangements [of the school] accurately reflect the written guidance previously provided to the school by the Rabbinate of the UOHC", but did not include the requested written guidance. Following a further request, the Rabbinate helpfully:

(i) stated that various dress requirements were set out in letters provided to the adjudicator in 2018 (which had been sent to me),

(ii) identified the document known as Elul 5772 concerning media access (which had also been sent to me previously but not named),

(iii) explained that the written guidance document referred to above "would have been a list drawn up and approved by the Rabbinate many years ago" and that "despite a thorough search both at the Rabbinate and at the school, this written guidance cannot unfortunately be located",

(iv) explained that the examples of Rabbinical rulings relating to "modesty of dress, types of suitable entertainment, technology etc" referred to in one of the above letters written in 2018 "cannot be located",

(v) sent me a copy of the school's SIF from 2013 which "has the Chareidi Ethos and Rules as set out by the UOHC", and

(vi) enclosed a copy of the response of the UOHC to the adjudicator concerning an objection to the school's arrangements which had been made in 2014. This provides an historical background to Charedi Judaism and explains the current day use of several terms and references associated with Orthodox Judaism.

23. At the meeting which I held on 18 November 2021, I explained the importance of there being published written guidance from a religious school's faith body, and my concerns that it had not been possible to locate copies of some elements of the guidance on which the school clearly relied for the basis of aspects of its admission arrangements. The school wrote to me on 25 November 2021 enclosing a letter from the Rabbinate of the UOHC , also dated 25 November 2021, which carried the heading "Guidance for Yesodey Hatorah Senior Girls School for Constructing Faith Based Admission Arrangements". This sets out "general Charedi principles and ethics as well as more specific guidance as to religious activities", and includes a reference to, and a copy of, the document "Elul 5772". It is very helpful that the school's faith body has set out afresh in a definitive document (and its attachment) its guidance to the school, and it is to this document which I will refer in what follows, since it now supersedes those extant examples of written guidance referred to above in (i) and (v).

24. This correspondence was made available to the objector who commented on requirements relating to a ban on the use of social media and the detail of sheitels (wigs) (both of which appear in the guidance) having been introduced into the school's admission arrangements without consultation. I shall deal with this concern below.

25. A further concern of the objector was that "The UOHC Guidance is effectively a set of ad hoc rules produced for one particular school and for application only for school admissions. The rules go far beyond what is normative in UOHC's many sub-communities or in the guidance in the UOHC's other schools." First, it should be clear from the preceding paragraphs, that a faith body is entitled to provide guidance to individual admission authorities without reference to that which may be provided by it to others, since the various provisions concern only the individual school and its religious authority. Second, guidance so far as it is of concern to me does indeed relate only to school admissions.

26. I turn now to my consideration of the objection.

<u>Do the arrangements offend against the requirements of Equalities Legislation?</u>

27. The school has pointed out that the arrangements require both men and women to adhere to "an overall principle of modesty" (as explained in the "Charedi principles and ethics" which I have quoted above). I note here that the SIF does not specifically request affirmation of adherence to the dress requirements on the part of women. Although most of the elements are likely to be relevant only to women, the prohibition on "very brightly coloured clothing" can also apply to men, and the SIF requires applicants to state that "I/we adhere to this guideline."

28. The objector has said that the dress requirements in the arrangements do not amount to "religious activities" because these stipulate "practices… that parents, or more precisely mothers, are required to abstain from. They are therefore non-activities rather than quote activities." Neither is "regular everyday attire", in the objector's view, an "activity". My view of these points is that if a faith body says that doing something (which can quite reasonably be described in terms of what is not done, it seems to me) constitutes an activity of a religious nature that can be taken into account by a school's admission authority, then this is by definition a religious activity for the purpose of paragraph 1.9i of the Code. The guidance which has now been provided by the UOHC to the school is explicit in authorising the use of the dress requirements which are included in the arrangements.

29. It is not uncommon for religions to impose different requirements on men and women, not only in relation to dress but to roles that may be held as leaders in faith matters or in requirements to take part in public prayer for example. In relation to the admission arrangements for a school with a religious character, this could lead to arrangements being unfair if it were impossible for a family with only one parent to satisfy the criteria as a result of the different expectations or requirements placed on men and women. That is not the case here and I do not consider that using criteria that apply principally (or even exclusively) to one parent rather than to the other means that the child or parent in question has been discriminated against. I have noted that the arrangements refer to "fathers, where applicable" and that the SIF requires only one signature from a parent/guardian. While I think that it would be helpful if the arrangements were also to refer to the position of any single fathers concerning the satisfaction of the dress requirements as they are set out in the arrangements, I do not believe that the arrangements are in breach of equalities legislation and I do not uphold this aspect of the objection.

Are the arrangements reasonable?

30. When the school responded initially to the objector's complaint that the certification by a rabbi on the SIF concerning an applicant's adherence to the guidelines of Charedi practice would entail the rabbi certifying activities that were not of a public nature, which was not reasonable or objective, it said that it considered that the process as set out in the arrangements was clear and that the countersignature would only not be given if the rabbi had "clear evidence to contradict the parent's self-certification process". The footnote to the SIF says:

**"Note for Member of the Rabbinate**

Do you have evidence that the applicant's family does not meet any of specific (sic) Charedi Ethos and Rules requirements set out in the form above? "Evidence" means clear proof of the family's failure to meet these requirements which you have obtained either through your direct personal experience of the family's practice, and/or through recorded evidence. If you have evidence that the family does not meet these requirements, please do **not** countersign this document."

31. The school referred me to a previous determination, ADA2990 (Hasmonean High School, 2015) in which it said the process of certification by a rabbi if he had "no

reasonable doubt that the information was correct" was found by the adjudicator to fail the test of being sufficiently objective, saying that its own test was different because it required "clear evidence". It also made reference to the adjudicator's determination in ADA3718 (Menorah Primary School, 2021) in which it was stated that "self-certification and confirmation by a Rabbi can both be lawful approaches because both can be objective, provided that the requirements being attested to are clear."

32. In order to be lawful, admission arrangements must be both reasonable and objective. Each is a necessary, but not a sufficient, condition as both must apply (for the avoidance of doubt, in addition to all the other requirements set out in the Code and elsewhere). The school's references to previous determinations fail in my view to recognise this. The Hasmonean determination referred to by the school was at that point concerned with objectivity, not reasonableness. Removing the lack of objectivity does not mean that the question about reasonableness has been removed. Similarly, in the Menorah Primary School determination, the adjudicator was at pains to say that confirmation by a rabbi "can" be lawful if it is objective, not that it is. I should also emphasise that adjudicator determinations are not precedent-setting. Each case is considered on its own merits and in the light of the unique circumstances of each school.

33. The issue in this case is the objectivity and reasonableness which attends the process set out in the arrangements and SIF of a rabbi certifying that an applicant's attestation to the observance of matters which do not take place in the public domain is accurate. The fact that this certification is not withheld unless there is "clear proof" of failure on the part of the applicant does not mean this is an objective test, since it is not clear what would count as "clear proof". Of course, a rabbi should not certify something which he personally believes to be inaccurate, but I cannot accept that it is possible for such a view to be formed objectively by all rabbis in all circumstances, since what is "clear proof" for one person in one set of circumstances may not be so for another in respect of such personal matters. Neither do I consider that it is reasonable to base decisions on applications for a school place on what one person (the rabbi) may or may not believe has taken place in private in another person's home, since this can never be certain. I uphold this aspect of the objection.

34. The school has said in later correspondence that it would be happy to alter the wording on the SIF such that the rabbi "will sign in relation to public practices only. Those practices which are private will be self-certified by the applicant alone", repeating its willingness to do so in subsequent correspondence. I am mindful at this point of the statement made at the head of the school's arrangements that:

"These revised arrangements implement the Adjudicator's Decision in ADA3361."

In ADA3361 (Yesodey Hatorah Senior Girls School, 2018), the adjudicator had said "I consider that the rabbi's confirmation should be restricted to what might be termed 'public' practices that can be objectively assessed." I shall refer to this again below.

35. I agree with this view of the adjudicator in ADA3361. For the arrangements then to be clear, it would be necessary in my view for them to specify which activities were the subject of self-certification, and which were not, and also for them to make clear (which they do not do currently) what the consequences would be for the self-certification process of occasional lapses in these private matters by the applicant, as also previously spelled out in ADA3361 (paragraph 26). I shall discuss below the certification of 'public' practices by the school's religious authority.

Are the arrangements clear?

36. The school responded to the objection that the term "brightly coloured", which is used in the arrangements (as "very brightly coloured", and on the SIF as "brightly coloured"), "has a sufficiently clear meaning that any applicant would understand" and referred to a letter from the UOHC in which it is stated that "the term bright is approved and it would have its normal plain English meaning".

37. The recent guidance from the UOHC says that:

"The wearing of very brightly coloured clothing is forbidden."

38. It is clear then that the school's religious authority has laid out for it in guidance that refraining from wearing "very brightly coloured" clothing on the part of parents/ guardians of a girl for whom a place is being sought is a religious activity which may be taken into account by it to give priority to the applicant. The school's arrangements do so, by stating that parents/guardians are expected to refrain from wearing "very brightly coloured" clothing, and by seeking confirmation on the SIF that "brightly coloured clothing" is not worn.

39. The Oxford English Dictionary (the OED) defines "bright" as it relates to a colour as "vivid and bold". The fact that this term is approved by the religious authority does not mean that it saved from having to meet the other requirements concerning admission arrangements, as I have set out above. Approval is, again, a necessary but not a sufficient condition. The question I am asked to consider is whether "bright" is clear in the arrangements, given that no definition is provided there.

40. Paragraph 1.37 of the Code requires that:

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

In order for that to be possible in connection with this element of religious observance, it would be necessary for the term "bright" to mean the same thing to all those who might read the arrangements. I think it probable that most people would agree that some objects one could imagine were brightly coloured, but that it is not possible to know where the dividing line between "bright" and "not bright" would be drawn by all people. Even the use of the OED definition would not remove this problem, as "vivid" and "bold" would not carry the same meaning for all persons, and the same is true when "bright" is qualified as "very

bright". If the school is to use this form of religious observance in its admission arrangements, it must find a way to set out what it requires which is clear to all readers. It has not done so, and I am of the view that this makes the arrangements unclear. I uphold this aspect of the objection.

Are the arrangements objective?

41. The arrangements refer, in the section which sets out Charedi principles and ethics, to fathers in the following way:

"Fathers, where applicable,…..must pray at a Charedi synagogue and attend all prayers on Sabbos, Yom Tov and the three daily prayers" and the SIF asks for affirmation and a countersignature from the Rabbinate against the statement set out there as:

"Member and regular [Hebrew script] of a Charedi [Hebrew script]".

I shall consider the wording of this particular statement below, but am here concerned with the objector's view that it fails to be objective because it is about synagogue attendance (as the school has confirmed) and this is not monitored "in an objective way." I take from this that the objection is that since the arrangements do not state how any monitoring of synagogue attendance takes place, no objective methodology is provided. The school has responded by saying that the countersignature would only be withheld if there were evidence of a failure to comply, which I accept might not depend on there being any strict monitoring of actual attendance. However, it is anyway the case that the requirement of clarity and objectivity applies to the arrangements themselves, which do not therefore need also to specify how attendance at a place of worship is monitored, provided the attendance requirement itself is clear. I shall return to the clarity of this part of the arrangements below, but I take the view that the arrangements do not fail to be objective for the reason given by the objector. I do not uphold this aspect of the objection.

Are the arrangements procedurally fair?

42. The objector's view is that because the Rabbonim of the UOHC consists of only a very limited number of rabbis who can countersign an applicant's SIF, it is possible that signatures will not be provided even if an applicant has met all the relevant requirements because the family is unlikely to be known to any of the rabbis entitled to countersign who may well not be their own rabbi. The school responded by outlining what it called the "centralised process" which has been set up for this purpose by the UOHC. I shall refer to this process again below. The school referred me to the UOHC's letter also responding to the objection, which set out the reasons for adopting this procedure, and included the statement:

"…SIFs are processed regardless of any specific Rabbi's availability at any given time."

The school also stated that "…the Rabbi will countersign unless he has clear evidence that a religious requirement is not being observed."

43. The objector then wrote to the adjudicator at some length saying that the countersignature process "…is geared and slanted to give priority to children from YHPS [Yesodey Hatorah Primary School, an independent primary school] and to exclude children from other schools." The objector also suggested that the adjudicator should seek admissions data from the school concerning the primary schools attended by girls who are admitted "which will reveal the scale of the problem".

44. The school has already told me in connection with its requested variation of the arrangements that the majority of girls who are admitted have attended YHPS. It would be of no value to me to know these figures in detail since such knowledge in the absence of information about the primary school attended by all of the applicants would not throw any light on the situation which the objector says exists. Even if all that information were available to me, the adjudicator's jurisdiction is limited to a consideration of the arrangements themselves, and does not extend to an investigation into how the school administers the admission process. So, I must confine myself to considering whether the arrangements themselves are procedurally unfair, as the objector alleges.

45. For the arrangements themselves to be unfair, they would need to be unfair in the way they favour one group of children over another in the admissions process. The objector says that the small number of rabbis who can countersign an applicant's affirmation on the SIF means that they cannot have first-hand knowledge of the applicants and that "It is much easier to control admissions by limiting a countersignature to a small number of elderly rabbis, some of them not even local, than delegating it to tens of local rabbis who know the applicants personally". The objector did not say at this point how the small number of potential signatories favours one group of applicants over another, and it would seem to me at least potentially that any difficulty arising from this arrangement would apply equally to all applicants not personally known to the rabbis who are entitled to sign. A reference in later correspondence from the objector to a potential unfairness because of the geographical origins of the Jewish groups which the school principally serves (on the one hand) and that of the Rabbis of the UOHC (on the other) which might result in a lack of familiarity with some potential applicants is related to the nature of the certification process and whether it is "positive" or "negative" in nature. I shall deal with this below but suffice it to say here that the process which the school has said it is willing to adopt would almost certainly eliminate any potential unfairness of this sort, as far as I can see.

46. When making the objection, the objector did state that some parents had failed to secure signatures to which they may have been entitled, and also alleged other irregularities in the processing of applications for places at the school in later correspondence. Any such concerns would be a matter for the Local Government Ombudsman to investigate as potential maladministration on the part of the school's admission authority but would not be a matter for the adjudicator.

47. The willingness of the school to amend the arrangements so that the countersignature given on the SIF relates only to matters of public observance means that the rabbi will not have to know the applicant personally to provide a signature, and it seems

to me that this should in large measure allay the concerns which the objector has expressed. I also note that it was the view of the adjudicator in ADA3361 that the rabbi's confirmation should be "restricted to what might be termed 'public' practices that can be objectively assessed", saying his view that the implementation of this "may require a longer period of reflection, followed by consultation." To date, the school has clearly not amended its arrangements to give effect to this view of the adjudicator, and I shall set out below my own view about what the school now needs to do concerning this matter.

48. It is an important complement to restricting the rabbi's countersignature to matters of public observance that the school has said, in its own words, that "the Rabbi (sic) will countersign unless he has clear evidence that a religious requirement is not being met". I have taken note of correspondence from the objector about the precise wording, which is used on the SIF, and note that it currently says "If you have evidence that the family does not meet these requirements, please do **not** countersign this document." In order for it to be unequivocally clear to parents reading the form that the wish of the school is that the rabbi sign it in the absence of evidence (as defined in the arrangements) on non-compliance on matters of public observance, my view is that a sentence such as "Please sign this document unless you have evidence that the family does not meet these requirements" would be required.

49. In correspondence, the school has also stated that this signature would be provided unless the rabbi has "personal experience", or "recorded evidence" of non-compliance, that personal experience is "personal contact the Rabbi himself has experienced" and that there is "no suggestion that the UOHC Rabbi contact various people to enquire applicants' religious practices". Further, the school has said "We must make clear that 'anonymous heresay [sic] evidence'….will not be included in either the Rabbi's personal experience nor recorded evidence." The objector has written to me at length putting forward the view that this position of the school makes the verification process "arbitrary and discriminatory" because of the impossibility of a small number of rabbis having sufficient knowledge of applicants and their religious practice. This would indeed be problematic if the certification were an affirmative one, since in the objector's own words "the nature of evidence will be different if positive evidence is required in every case or if negative evidence is required only for those being rejected". As I have said, the school has made it clear that it is content to ensure that the arrangements set out that the certification process it uses is of the latter type, and it is my view that the arrangements should state this with clarity, and also explain to potential applicants what would, and what would not, be involved in a rabbi's personal experience (in the way that it has in the correspondence referred to above) in order that they should have a clear picture of "how places ….will be allocated" (paragraph 14 of the Code).

50. The objector has also set out further concerns about any recorded evidence which would be relevant to the certification process, saying that "the school has not provided any details of how this evidence is to be obtained and recorded and the nature and quality of the evidence", going on to cite case law concerning administrative decisions and the requirements of natural justice with respect to matters such as the access to data

and the right to make representations before a final decision is made. For the reason given above, I am of the view that in order to be clear to readers, the arrangements should say what recorded evidence a rabbi would take into account, although I do not think it would be necessary to set out the details of how such evidence is to be recorded in the arrangements themselves. As to the administrative process involved in relation to any such information, this would again be a matter for someone other than the adjudicator to consider.

51. The UOHC has told me that its centralised certification process has been put in place

(i) to ensure the countersignatures are authentic

(ii) to ensure that rabbis are not subject to any undue pressure to sign, and

(iii) that SIFs are processed regardless of the availability of individual Rabbis at any given time.

The objector has criticised each of these reasons, and concluded that they do not stand up to scrutiny, preferring instead the verification process said to be in place for other Charedi schools for which the UOHC is also the faith body in which a local rabbi "who actually knows the applicant family is the one required to verify the family's religious observance".

52. The objector has also said that there is no evidence that the school has consulted its faith body "on the system in place", and that it has therefore failed to comply with paragraph 1.38 of the Code which I repeat here for ease of reference. This requires that:

> "Admission authorities …**must** ….consult the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated."

My understanding of this requirement is that it relates to the matters which the admission authority decides to take into account as demonstration of membership or practice of the faith, rather than the level of detail that is concerned here in the verification of such practice by the religious authority. Nevertheless, I have been given clear evidence that the UOHC has established the process it uses in conjunction with the school and I have dealt elsewhere with its guidance and the use of religious activities which are laid out by it by the school.

53. The number of first preferences which were received for a place in Year 7 at the school in recent years were:

| 2019 | 2020 | 2021 |
|---|---|---|
| 74 | 88 | 84 |

The oversubscription criteria under which girls were admitted in each of these years were:

| | 2019 | 2020 | 2021 |
|---|---|---|---|
| **Siblings** | 32 | 34 | 40 |
| **Charedi girls** | 33 | 45 | 31 |
| **EHCP admissions** | nil | 2 | 1 |
| **Total offers** | 65 | 81 | 72 |

It is clear therefore that in each of these most recent years the school was oversubscribed, and that the final admission was under the oversubscription criterion which includes all Charedi girls. The arrangements provide that distance of the home from the school is used as the tie-breaker in these circumstances. In all probability, therefore, the school has been oversubscribed with Charedi girls.

54. I have no reason not to accept what the UOHC and the school have told me about the processing of SIFs, and I have been given no evidence that the arrangements themselves result in some girls not being admitted because they are not accepted as Charedi due to a procedural unfairness of the sort which the objector alleges. I do not uphold this aspect of the objection.

55. However, and finally, it seems to me that rabbinical certification (which the school intends shall now relate only to public practices) under the "centralised process" employed in the arrangements does nevertheless have inherent difficulties associated with it, even though the school now intends this to be a "negative" certification process. I have said that in order to meet other requirements of the Code the arrangements need to enable any applicant to understand how places at the school will be allocated and that this will require them to be explicit as to the "personal experience" or "recorded evidence" that the rabbi will take into account. This is particularly relevant since under the process proposed by the school it will be incumbent on a rabbi to provide a countersignature, unless he has evidence that he should not. Recorded evidence might well be evidence concerning public religious observance provided by the rabbi of the synagogue attended by the family, and if so, the arrangements should state this (as I have said).

Religious activities.

56. The school replied to the objector's concern that certain of the dress requirements which are included in the arrangements "are not based in Jewish law" by referring to correspondence from the UOHC, also in response to this element of the objection, which stated that "the requirement concerning casual clothing such as denim, leather and lycra is accurately reflected in the school's admission arrangements".

57. The recently provided written guidance from the UOHC sets out clearly that:

“Casual garments and footwear, denim and other clothing made from leather and lycra …..are not permitted.”

As I explained above in the context of paragraph 1.9i of the Code, the fact the UOHC has laid out the avoidance of such attire as a form of religious observance means that it is a religious activity which the school may take into account in its admission arrangements when giving priority to applicants. I do not uphold this aspect of the objection.

Looked after and previously looked after girls

58. The arrangements give priority to Charedi Jewish girls who are looked after or previously looked after. Paragraph 1.37 of the Code says:

“Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith, they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.”

59. The school responded to my concern that since the school’s faith designation is Jewish, not Charedi Jewish, the arrangements fail to comply with what the Code requires by referring me to Regulation 9 of the Regulation. It was its view that this provision, when read together with those of the Code, “enable the school to select according to its faith-based criteria, as agreed with its religious body. The School (sic) do not believe that it was Parliament’s intention to create one rule for the treatment of looked after and previously looked after children of the faith, and another rule for children of the faith.” It further referred me to the DfE’s recent guidance concerning children adopted from state care outside England, which uses the phrase “of their own faith” when saying which looked after and previously looked after children it is permissible for a school with a religious character to give priority to. It said that “The School submits that its “own faith” designation is Charedi”, citing recent correspondence from the UOHC, which I have seen, which the school said referred to “its followers as ‘members of the Charedi faith’”, but which in fact referred to its members as “followers of the Charedi faith”, to be accurate. The school said that “some denominations of the Jewish faith do not share fundamental principles of the Charedi faith, and others do not share any principles at all. It follows that looked after children and previously looked after children falling into these categories cannot be considered ‘of the faith’.”

60. Regulation 9 sets out the provisions which are repeated in paragraph 1.37 of the Code, but instead of the phrase “of the faith” when referring to the children who can be given priority sets this out more fully as children “of the same faith as that of the school in accordance with its designation” having already said that the regulation as a whole applies to “an admission authority for a school which has been designated as having a religious character under section 63(3)” [of the Act]. I explained above that this designation is made

by the Secretary of State, and therefore not by any other person or body, including a school's religious authority.

61. As pointed out by the objector, The Yesodey Hatorah School (Designation as having a Religious Character) Order 2005 (SI No 3313) states that:

> "The religion in accordance with whose tenets religious education is, or may be, required to be provided at the school …..is Jewish."

This means that the school is required to give first priority to all looked after or previously looked after Jewish girls in its oversubscription criteria. However, the arrangements give this priority to relevant Charedi Jewish girls, not to all such Jewish girls as is required. The arrangements are in breach of paragraph 1.37 of the Code.

62. I note in passing that the view expressed by the school that legislation permits it to "select according to its faith-based criteria, as agreed with its faith body" does not quite accord with my own understanding. First, there are the provisions concerning looked after and previously looked after children which, as I have just explained, are clearly set out in secondary legislation. It is also the case that it is not for a faith body to tell an admission authority what admission arrangements to use, as the school's statement could imply. Paragraph 1.38 of the Code requires no more than that an admission authority "have regard to" guidance from the faith body concerning the construction of its faith-based admission arrangements, which means that a school admission authority may depart from such guidance if it has good reason to do so. Further, religious activities laid out by a faith body under paragraph 1.9i of the Code are permissive, and not mandatory. The admission authority may choose to use them (as laid out) or it may choose not to, having, of course, had regard to what the guidance says about the desirability of using such activities. I think it is also worth me saying, for the benefit of the school as its own admission authority, that its choice to give priority to girls from Charedi families, after the priority it must give to all looked after and previously looked after Jewish girls, is not inconsistent with its faith designation as "Jewish", provided the means by which it does this comply with the requirements which I have just referred to concerning the guidance which it has received form its faith body, and provided these are also compliant with the other requirements of the Code.

Dates used in the arrangements

63. The school helpfully accepted that a number of the dates given in the arrangements were inaccurate, and it has accordingly amended these in the version now on its website. However, as determined the arrangements contained dates which were erroneous, and this made them unclear and therefore they failed to comply with paragraph 14 of the Code.

The use of Hebrew script

64. Hebrew script is used in a number of places within the arrangements themselves (8 times) and on the SIF (17 times). Paragraph 14 of the Code requires that admission arrangements are clear, and that:

“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

My understanding of the term “parents” here is that it refers to any parent who might read the arrangements, rather than any particular group of parents. There is one clear example where Hebrew script is used without any English translation, and I shall deal with this below. More generally, however, Hebrew script appears alongside English words such as “modesty”, “holiness” and “community”, and usually where it is evident to the reader that what is provided is a single word translation. The school’s response to my concern that the use of Hebrew script made the arrangements unclear was to say that it will review its use and ensure that where it is retained, the arrangements will provide “a clear English translation in brackets”.

65. While I am grateful to the school for its willingness to seek to achieve compliance with the requirement of clarity in this way, and accept that what it suggests may seem reasonable at first glance, it is nevertheless not without its problems. For example, where Hebrew script appears at the end of a phrase or sentence, such as in:

“Very straight or figure hugging skirts are forbidden [Hebrew script]”

it is not self-evident whether the script translates the word “forbidden”, or the whole sentence, or indeed whether it adds something that the English words alone do not convey. I accept that it is possible to find the same Hebrew script at the end of another sentence in the arrangements which also ends in the word “forbidden”, and therefore to deduce that it is probably a translation of that word, but I would expect most potential readers of the arrangements either not to see that connection, or if they did, still to be unsure about what was written. In this case, to use the school’s approach would require that the Hebrew script is used first, followed by (“forbidden”), and I find it difficult to accept that a school’s admission arrangements not ostensibly written in English in the first case can meet the test that they be clear.

66. The school has said to me that in all cases (apart from the example dealt with below) the use of Hebrew script in the SIF is clear because English is provided in one column and the Hebrew script in another column is a translation of it. It says that this “accommodates applicants who do not read English easily”.

67. It seems to me that while it is obviously helpful for the school to wish to assist such parents, anyone who did not read English easily would struggle with the arrangements generally, and not just with some of the words that are used. For such parents, the school could clearly find alternative means of assisting their understanding which would be more

effective than inserting Hebrew script into English text in the way that the arrangements do. I am also conscious that it would only be those familiar with Hebrew script that would know, when looking at the arrangements, that it was being used to provide a translation into Hebrew of the English written there, and that for any other person its appearance might well be perplexing. Finally, if Hebrew script is retained and then translated, this will undoubtedly make the arrangements cumbersome to read for either a fluent speaker of English or for any other person reading them. While I accept that it is absolutely appropriate for the school to wish to make its admission arrangements accessible to all those who might read them, it nevertheless seems to me that for all these reasons, the use of Hebrew script in the arrangements, either as this currently appears, or in the way the school proposes, negatively affects their clarity for readers. My view is that the arrangements fail to comply with what paragraph 14 of the Code requires.

Member and regular [Hebrew script] of a Charedi [Hebrew script]

68. This is one of the statements appearing in the SIF against which parents are requested to make an affirmatory statement. No translation of the Hebrew script is provided, and no definition is given of what is meant by “regular”. The school responded to my concern that the statement was unclear for both these reasons by acknowledging the “lack of clarity” and offering an alternative wording which uses only English and which, as the school says, reflects the wording which appears in the “Charedi principles and ethics” as these are set out in the arrangements. This does not use either the word ”regular” or the word “member”, the latter (referring to synagogue membership) having been found to be in conflict with equalities legislation by the adjudicator in ADA3361. In that determination, the adjudicator also referred to the issue of the clarity which parents would have concerning the effect of occasional lapses in their observance of the expectations of membership of the Charedi community on their ability to “easily understand” if they met those requirements and therefore whether they were able to affirm statements appearing on the SIF. While I also accept that the principles set out ongoing expectations, it would nevertheless be of concern if changes made by the school to this part of the arrangements following this determination did not take account of the need for clarification concerning “regular”, if this is used.

69. As determined, however, the arrangements are unclear because the word “regular” is used but not defined, and because untranslated Hebrew script is employed. They therefore breach the requirement of clarity in paragraph 14 of the Code.

Places for girls in Years 6 and 7

70. The arrangements say that the PAN for Year 5, the normal year of admission, is 65. A subsequent statement is made that up to 65 places will be offered in each of Year 6 and 7 to start in September 2021 (this date should have been given as 2022) “including children transferring from years 5 and 6”. This is capable in my view of being understood to mean that this number of places is available over and above the number of children transferring from Year 5 to Year 6 and from Year 6 to Year 7 at that point, which is not the school’s intention, and so the statement is unclear and in breach of paragraph 14 of the Code.

71. A school's PAN applies to the normal year of admission only, and not to subsequent year groups. For these, whether a place is available or not to a parent seeking admission for their child is determined on the basis of whether an admission would prejudice the provision of efficient education or the efficient use of resources (section 86 of the Act). For that reason, even if the school intended to offer additional places in years which are not the normal year of admission, it would not be able to specify a precise number, other than in the form of an expressed intention.

72. I have referred previously to the school's request, which has been approved, to remove the availability of places in Years 5 and 6 from its arrangements. I will consider below the question of the PAN which will need to be set for the new normal year of admission, Year 7.

The reference to social media

73. When the school provided me with evidence that the arrangements had been determined, it sent me a copy of the minutes of the meeting of the board of Governors on 27 January 2021 (which had taken place via Zoom). These minutes also stated that a sentence had been added to the section of the arrangements concerning internet use, where "…any entertainment accessed online via any computerised device" was elaborated as:

> "This includes online gaming, or online presence for personal social use (social forums, social media accounts)."

74. The Governors agreed this clarification, as they understood it, of the existing wording in the arrangements setting out the prohibition on access to social media which those wishing to be considered as adherents to Charedi principles are expected to observe. When I looked at the arrangements which the school had sent to me, this sentence was however absent, and it seemed to me that since the Governors considered the existing wording in the arrangements to need clarification, this must mean that they remained unclear.

75. The school has agreed to correct this omission, referring to a letter from the UOHC which it sent to me which says that the clarification which the school has made is "in line with the UOHC's guidance regarding internet use." Guidance was provided in the document "Elul 5772" , which does not include the words added to the arrangements, but the guidance document recently sent to the school from the UOHC (to which I referred above) does set out the reference to online personal social use and to social forums and social media although not precisely word for word as agreed by the school. Nevertheless, I am in no doubt that the school's faith body has now laid out in written guidance to the school this prohibition, such that it may use as a religious activity in its admission arrangements.

76. The school told me that this addition to its arrangements had been made under regulation 19(d) of the Regulations, which the objector pointed out to me allows

arrangements to be varied “to correct a misprint”, and that this was not such but “an entirely new ban”, which was also “unreasonable”. It is true that the additional sentence does not correct a misprint, and that the school’s reliance on regulation 19(d) is misplaced. However, given that the change gives examples of prohibitions already present under the broad prohibition concerning “any entertainment accessed online via any computerised device”, I do not think it a new prohibition, but a clarification which the school is entitled to make under regulation 19(a) of the Regulations, which allows an admission authority to vary its arrangements to give effect to the Code, and in this case to the requirement of the Code that arrangements be clear. As to the objector’s view (to which the school has made no further response) that the new wording adds an unreasonable prohibition, I have not given this further consideration it was expressed well after the deadline for objections to be made. Also, since my view is in any case that this constitutes a clarification of a general prohibition, it would have been open to the objector to make an objection concerning its reasonableness within the timescale provided in the Code.

77. As originally determined, the arrangements were insufficiently clear and failed to comply with paragraph 14 of the Code.

Information collected on the SIF

78. Paragraph 2.4 of the Code says:

“In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, the **must** only use supplementary information forms that request additional information when it has a direct bearing on decisions about oversubscription criteria…..”

I was concerned that the information sought on the SIF about the name of the shul (synagogue) attended by a parent and the name of their Rav (rabbi), appeared to have no counterpart in the oversubscription criteria in the school’s arrangements.

79. The school has accepted that this is the case and has offered to remove the question from the SIF. However, as determined, the arrangements were in breach of paragraph 2.4 of the Code.

The PAN for Year 7

80. The school’s request that the arrangements be varied to remove the offer of places to children in Years 5 and 6 has been approved. This means that the normal year of admission is now Year 7, and that the school must set a PAN for these admissions. Prior to the offer of places in these primary years, the school had set a Year 7 PAN of 80.

81. The LA, whose representatives were present at the meeting which I held on 18 November 2021, has expressed its view that it would prefer the previous PAN to be reinstated in view of the local demand for Year 7 places and the school’s net capacity assessment. This latter gives a net capacity of 526, based on a maximum number of

workspaces of 585 and a minimum of 526. For an 11 to 16 school, this would permit a PAN of 105.

82. The LA's projection of the future need for Year 7 places in Hackney shows the current number of places (including the school's 65 places) exceeds the projected demand by no more than 9 places for 2022 and 64 for 2023. The school has been oversubscribed with applicants for Year 7 places in each of the last three admission rounds (2019 to 2021), and the school has "voluntarily admitted above PAN of 65 in Year 7" in 2021 according to the LA (I have explained above why this is not an accurate description concerning admissions to a year group which is not that of the normal year of admission for a school). It admitted 72 girls in September 2021.

83. Paragraph 14 of the Code requires that a school's admission arrangements are reasonable, and this means that the PAN set for the normal year of admission must also be reasonable. In view of the facts which I have set out above, when the school makes changes to its arrangements in order to comply with this determination, a PAN of 65 for Year 7 for September 2022, which is the current PAN for Year 5, would fail to be reasonable in my view, by virtue of being too low.

## Summary of Findings

84. I have set out in the preceding paragraphs the reasons why I do not uphold the objection that the arrangements:

(i) fail to comply with equalities legislation concerning the dress code which is part of the stated Charedi principles;

(ii) are procedurally unfair because of the process of Rabbinical certification employed;

(iii) fail to be objective because no objective means of monitoring synagogue attendance is given, or

(iv) breach paragraph 1.9i of the Code by employing criteria to prioritise applicants which are not religious activities.

85. I have also set out the reasons why I uphold the objection that the arrangements:

(i) fail to be reasonable because they employ an oversubscription criterion which requires a rabbi to certify the observance of religious activities which take place in private, in breach of paragraph 1.8 of the Code;

(ii) breach paragraph 1.37 of the Code because they do not give priority to looked after and previously looked after children "of the faith";

(iii) breach paragraph 14 of the Code because they are unclear:

a. because the term “bright” which is used in the SIF is not defined;

b. because of incorrect dates which are given;

c. because they employ Hebrew script;

d. because a statement in the SIF uses the word “regular” which is not defined and because it uses untranslated Hebrew script;

e. because an unclear reference is made to the availability of places in Years 6 and 7, and

f. because the reference to the prohibition of access to social media is unclear.

(iv) breach paragraph 2.4 because the SIF asks applicants to provide information which does not have a direct bearing on the application of any of the oversubscription criteria.

86. I have also expressed my view concerning the reasonableness of the arrangements with respect to the PAN for the normal year of admission.

87. I have referred to changes which the school has helpfully agreed to make, notably that matters of religious observance attested to by applicants will in future not be subject to Rabbinical confirmation if these take place in private, and that for such matters which take place in the public domain Rabbinical confirmation will only be withheld if the rabbi has clear evidence in the form of personal experience or recorded evidence of non-compliance. I have suggested ways in which these revised requirements can be set out and explained to applicants in a way which is clear, and ways in which the clarity of the self-certification process can be supported by what the arrangements say.

88. The national offer day for secondary school places for September 2022 is 1 March 2022. The PAN which the school now needs to determine for admissions to Year 7 in September 2022 will materially affect the availability of such places in Hackney and so it is important that this is done as soon as possible before this deadline, and in my view this should ideally be no later than 15 January 2022, which is the date which I have determined elsewhere shall be the date by which the agreed variation to the school’s arrangements removing places in Years 5 and 6 is to take place. However, in view of the date of this determination, I will make the deadline for the setting of the Year 7 PAN 21 January 2022. Other changes to the arrangements which are required in order for the school’s admission authority to comply with this determination should be made no later than 28 February 2022, which is the deadline for the determination of the school’s arrangements for September 2023.

## Determination

89. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the Governing Board for Yesodey Hatorah Senior Girls School, Hackney, London.

90. 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.

91. By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised in relation to the PAN for the normal year of admission no later than 21 January 2022, and in relation to other changes which are required no later than 28 February 2022.

Dated: 10 January 2022

Signed:

Schools Adjudicator: Dr B Slater