



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3780 Menorah High School for Girls

Objector: A member of the public

Admission authority: The Governing Board of Menorah High Schools for Girls, Barnet, London

Date of decision: 23 February 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 for September 2022 determined by the governing board for Menorah High School for Girls, Barnet.

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 as soon as possible after 28 February 2022, and no later than 31 March 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 Menorah High School for Girls, Barnet (the school), a voluntary aided school for girls aged 11 to 18 for September 2022. There are a number of elements to the objection, namely:

- a. to the clarity:
 - (i) of what is required to demonstrate Charedi practice;
 - (ii) of how Charedi practice is assessed by the school's Admissions Committee;
 - (iii) of the role of the school's Admissions Committee and its status;
 - (iv) of the arrangements concerning the self-certification provided by applicants about their religious observance;
- b. to the procedural fairness of the arrangements concerning the additional scrutiny given to some applications but not to others, and
- c. to the procedural fairness of the arrangements concerning the process used by the school's admission authority regarding possible fraudulent claims made by or misleading evidence presented by applicants.

2. The local authority (LA) for the area in which the school is located is the London Borough of Barnet. The LA is a party to this objection, as are the objector and the school's governing board. The other potential party to the objection is the school's religious authority, concerning which I will make further reference below.

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 objections to these determined arrangements on 12 April 2021, 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 2012 regulations) by providing details of their name and address to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). 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 22 December 2020. 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. However, I have noted that the school has made the required changes to its definition of looked after and previously looked after children in the revised version of its arrangements for 2022 which are referred to below. 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 entirely in lower-case and sometimes its initial letter is capitalised. I shall use the spelling and form provided when quoting from documents sent to me by the parties. Otherwise, I will use "Charedi".

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 12 April 2021 and subsequent correspondence;
- b) the school's response to the objection, supporting documents and subsequent correspondence;
- c) information provided by the LA;
- d) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
- e) a copy of the Statutory Instrument made for the school in 2017 designating it as a school with a religious character;
- f) a copy of the 2012 regulations;

- g) a copy of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) (Amendment) Regulations 2022 (the 2022 regulations);
- h) copies of the determinations made by the adjudicator in ADA3380 (Pardes House Primary School) and ADA3505 (Menorah High School for Girls), and
- i) a copy of the determined arrangements.

11. When the Office of the Schools Adjudicator (OSA) secretariat wrote on my behalf to the school setting out my jurisdiction concerning the objections which had been made to the arrangements and the further matters of concern which I had concerning them, the letter also included the following:

“The adjudicator is aware that, through no fault of its own, the school has no prescribed faith body..... The school is nevertheless requested to provide the adjudicator with a copy of any written guidance which it has received in the past from the body which it understood was its prescribed faith body concerning the school’s admission policy. I am copying this letter to the Rabbi of the Gateshead Jewish Community, for information.”

12. It had been the school’s understanding when it determined the arrangements, and it was the understanding of the adjudicator in a previous determination, ADA3505, that the school did have a prescribed faith body, and that this was the Rabbi of the Gateshead Jewish Community. However, this was not the case, since no such body had been prescribed for the school at that time. At the date of this determination regulations have been made and laid before Parliament, prescribing The Office the Rabbi of The Gateshead Jewish Community as the school’s Rabbinic Authority. Those regulations are The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) (Amendment) Regulations 2022 (the 2022 regulations), and they come into force on 28 February 2022.

13. What the school has referred to as guidance from this body to it in connection with the matters before the adjudicator in ADA3505 has been provided to me in response to the request which I made to the school. I shall consider the objections and the other matters of concern regarding the arrangements in the light of what the school has understood was the guidance to it from its faith body, and as if that body had been so prescribed at the time when the arrangements were determined. I believe that this will allow the school to understand how the relevant provisions apply to it and its faith body, now that one has been prescribed in the 2022 regulations which are about to come into force.

14. I shall set out in an addendum to this determination the consequences for the school’s admission arrangements for 2022 (and subsequently) of the position which is described above.

The Objection

15. The objector made a series of numbered complaints on the form of objection. There is some overlap and repetition between them, but I will summarise each as presented to me.

(i) Charedi practice

The objector quoted paragraph 1.37 of the Code, which says that:

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

and then set out what the arrangements say regarding the nature of Charedi Judaism and the need for parents to “demonstrate Charedi practice for at least five years” in order to be given priority for admission, if the school is oversubscribed. It was the objector’s view that the arrangements do not conform with what the Code requires since “it is not at all clear what applicants are required to demonstrate over a period of at least five years nor what evidence is used as an objective measure of this.”

(ii) Assessment of Charedi practice

The objector quoted paragraph 1.8 of the Code, which says that:

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

and went on to say that the arrangements fail to be clear because they do not provide adequate information to allow the reader to understand on what basis the Rabbinical Admissions Advisory Committee (the Admissions Committee, which the arrangements say is a committee of the governing board), which is given the role of resolving “any dispute” as to whether a child met the criteria of being Charedi, would make its decision, nor why there might be a dispute in the first place. The objector says it is therefore unclear whether the statements made on the SIF by the applicant and their rabbi are, or are not, taken at face value by the school.

(iii) The role of the school’s Admissions Committee

The objector set out in the form of objection a concern that a statement in the arrangements that the Admissions Committee has a role in ascertaining whether or not a parent has made a fraudulent application means that it would take a view about the adequacy of the parent’s self-certification of matters attested to on the SIF and of the confirmation of a rabbi that the family meets the requirements of public religious observance. The objector said that there is no information provided in the arrangements to explain how either of these assessments would be made and although the objector did not say which requirement of the Code this was considered to breach, I have understood this complaint to be that the arrangements fail to be clear, in breach of paragraph 1.8.

(iv) Additional scrutiny

The objector said that the statement in the arrangement that where governors have concerns that a fraudulent application may have been made such concerns would be investigated, falls foul of the requirement concerning fairness and objectivity of the arrangements in that some applications would be subject to an additional scrutiny not applied equally to all applications. Since the arrangements do not state the circumstances which would lead to this happening, the objector considered that this means that the arrangements are unclear, potentially discriminatory and procedurally unfair, which I have understood to be an objection that the requirements of paragraph 1.8 are breached. The objector subsequently made a further objection that since the arrangements do not say how any parent whose application was considered to be potentially fraudulent would be informed of this fact and allowed to respond, this did not conform to the rules of natural justice and was therefore a further source of procedural unfairness.

(v) Self-certification

The objector said that it is unclear, as a result of the possible investigative process referred to in the arrangements, whether or not the self-certification of adherence to the requirements of Charedi practice made by parents on the SIF is subject to a check, or whether it is not. I have understood this to be an objection that the arrangements fail to comply with paragraph 1.8 of the Code.

(vi) The composition and status of the school's Admissions Committee

The objector stated that since the arrangements do not make clear who the members of the Rabbinical Admissions Advisory Committee are, how they are appointed and on whose authority they act, this “adds to the overall impression of opacity” of this aspect of the arrangements, which I have understood to be an objection that the arrangements are unclear and in breach of paragraph 1.8 of the Code.

Other Matters

16. When I considered the arrangements as a whole it appeared to me that further 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 some, but not all, Jewish girls who are looked after or previously looked after;
- (ii) Paragraph 14 concerning the clarity and objectivity of the phrases “acceptable information” and “inappropriate material” used to describe rules for responsible internet use as part of Charedi practice, and
- (iii) paragraph 1.8 of the Code concerning the objectivity of the phrase “very brightly coloured” which is used in the appendix to the arrangements to describe proscribed clothing for Charedi females.

Background

17. A previous determination, which has been referred to in correspondence by the parties, considered an objection to the school's admission arrangements for September 2020. In that determination (ADA3505) the adjudicator set out the school's background as a former independent school, which became part of the publicly funded system of schools as a voluntary aided school in April 2016. A Statutory Instrument was made for the school on 27 April 2017 by the Secretary of State, designating it as a school with a religious character of Jewish. It is therefore designated as a school with a Jewish religious character under section 69(3) of the Act.

18. The arrangements, as determined by the governing board on 22 December 2020, and as provided to me by the school, say in summary the following:

- (i) the PAN for Year 7 admissions is 60
- (ii) the school has a "Chareidi (sic) (strictly orthodox) Jewish religious designation which meets the needs of strictly orthodox Jewish families"
- (iii) "Charedi" is defined in the following way:

"Charedi Jews represent a distinct group within the Jewish community.....all members of this community lead an extremely modest way of life Charedi Judaism for the purpose of these arrangements is defined as a lifestyle and daily practice that is governed by an unequivocal and lifelong commitment to the following elements of Charedi practice observed in accordance with the Code of Law known as the Shulchan Aruch and its commentaries. In order to establish faith priority for Menorah High School for Girls, the SIF requires that you demonstrate Charedi practice for at least five years.

- Daily Torah study by men
 - *Mitzvos* observance – observance of Torah commandments
 - The central tenets of *Yiras Shomayim* – behaving in private as one would do in public
 - The central tenets of *Tzenius* – modesty in dress, speech and behaviour."
- (iv) if the school is oversubscribed "it prioritises Charedi girls of the orthodox Jewish faith."
 - (v) a Charedi girl is defined as one whose parents or guardians(s):
 - a. "have a genuine desire for orthodox Jewish schooling of a Charedi nature
 - b. observe the Sabbath and Holy Days, adhere to the dietary laws, engage in regular daily Torah study and maintain active participation in an orthodox

synagogue with, as a minimum the applicant's father performing all three prayers in a quorum wherever possible."

- (vi) parent(s)/guardian(s) must submit a SIF proving their commitment to Charedi practice in order for an application to be given priority on the grounds of Charedi Jewish faith.
- (vii) girls whose Education, Health and Care plan names the school will be admitted
- (viii) the oversubscription criteria are:
 - a. Looked after or previously looked after (as defined) Charedi girls
 - b. Charedi Jewish girls with medical or social grounds for admission to this school in particular
 - c. Charedi Jewish girls with sisters (as defined) attending the school at the time of application
 - d. Any multiple birth applicants "if one sibling is awarded a place in the ballot"
 - e. Other Charedi Jewish girls
 - f. Other looked after or previously looked after girls
 - g. Other girls
- (ix) Random allocation is used as a tie-breaker.

19. An appendix gives details of Tzenius requirements under the heading "Guidelines for Mode of Dress". These list expectations for both students and parents (of both sexes), and include in relation to female mode of dress the following prohibition:

"In general, clothing must not be very brightly coloured."

20. Another appendix gives guidelines for internet access for pupils under the supervision of parents at home. These include:

"Parents must be absolutely clear about what constitutes acceptable information."
and

"Never may any inappropriate material be passed on in any way."

21. The SIF includes the following statement requiring the signature of a parent or parents:

"I/We and the Applicant meet the Charedi criteria as prescribed in Menorah High School for Girls' Admission Arrangements."

This is followed by a Rabbinical Statement that:

“I (name of Rabbi).....confirm that the pupil named above and their family meet the standards of public religious observance set out in Menorah High School’s Admission Arrangements. I also confirm that I have no evidence of this applicant or her parent failing to meet the private elements of religious observance as set out in those arrangements.”

A footnote advises the Rabbi that if they have objective evidence that the private elements of Charedi religious requirements are not met, the form should not be signed and the evidence should be given to the school.

22. Also contained within the arrangements are the statements about the Rabbinical Admissions Advisory Committee which are the subject of some aspects of the objection.

23. Preference data provided to me by the LA shows that the school has been heavily oversubscribed in each of the last three admission rounds, and admissions data from the school that in the last two years the final place was offered to an applicant falling within the category “other Charedi Jewish girl”.

Consideration of Case

24. 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.

25. 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.

26. 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)".

27. 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.

28. 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. Regulation 34 of and Schedule 4 to the 2012 and 2022 regulations together deal with the names of the bodies or persons representing the religion or religious denomination for Jewish schools. In the case of Menorah High School for Girls, there was no such prescribed body set out at the time when the arrangements were determined, and as a result the school had no religious authority for the purposes which I have just described.

The Guidance Provided to the School by the Rabbi of the Gateshead Jewish Community

29. In ADA3505 the adjudicator stated that he had "not been provided with any specific admissions guidance in writing" issued by the Gateshead Community Rabbi, other than comments made by the rabbi on proposed changes to the school's admission arrangements in 2020. The adjudicator concluded that since other advice to the school was reportedly given orally, there was nothing published which satisfied the requirements of paragraph 1.9 i) that religious activities must be "laid out" in the way explained by Cobb J. It was his view that the school's admission arrangements did not comply with the Code because they do "prioritise children on the basis of their own or their parents' activities, which have not been laid out as religious activities by the person representing the religion of the school."

30. The material with which I have been provided by the school is the same correspondence referred to by the adjudicator in ADA3505. Although he also referred to his understanding that the governors had sought further guidance and that this had been provided in writing, he had not seen this, and nothing of this sort has been provided to me. I agree with the conclusion of the adjudicator, set out in paragraph 18 of ADA3505, that what he had been provided with did not meet the requirements referred to above, and am

therefore of the view that the arrangements fail to comply with the requirements of the Code for the same reasons that were set out in ADA3505.

Nevertheless, the adjudicator in ADA3505 took the view that considerable time had been invested by all concerned in consideration of the school's arrangements, including by the governors who had proposed amendments to them, and that it was therefore appropriate for him to address the grounds of the objection put forward by the objector. For the same reasons, I take the same view in the present case. I turn now to my consideration of the objection.

Charedi practice

31. The school responded to the objector's view that the arrangements did not make clear what a parent must do to demonstrate Charedi practice by saying that it believed that the definition of "Charedi" in the arrangements, when read together with the appendices to the admission arrangements (which set out requirements concerning dress and internet access) "provides parents with the necessary clarity". It said, paraphrasing the words of paragraph 1.37 of the Code, that "any Charedi Jewish parent would easily understand how the 'faith-based criteria will be reasonably satisfied'".

32. However, this is not the requirement that paragraph 1.37 of the Code sets out in relation to a school that wishes to give priority to Charedi Jewish children. Since the Code does not say that admission arrangements must be clear only to some parents, it necessarily (in my understanding) means that a school's admission arrangements must be clear to parents in general. That is, whether or not they are clear to a specific group of parents who may have prior knowledge of the matters referred to is not a sufficient test as to the clarity of arrangements for the purposes of the Code. So even if my view was that the arrangements allowed a member of the Charedi Jewish community to easily understand how the faith-based criteria will be reasonably satisfied, as the school says is the case, that would not allow me to conclude that the Code requirements were being satisfied. I understand the Code to require that the admission arrangements for a school must be clear in themselves, such that an ordinary member of the public who might consider applying for a place for their child there can understand the means by which some children are given a higher priority for admission than others.

33. What the arrangements say is that there are four elements of observance which are required in order for a parent to demonstrate Charedi practice and so gain priority for the admission of their daughter to the school. I note that this is a reduced list from that which applied to the school's arrangements as originally determined for September 2020 and which were considered by the adjudicator in ADA3505, when there were six. Nevertheless, even though the list is now smaller, the need to ensure that the requirements themselves, and what is needed in order to meet them are clear, remains. The adjudicator in ADA3505 considered the six elements of observance in turn, and for the sake of completeness I shall do the same for the four which are present in the arrangements for 2022.

34. However I must first comment on the fact that the school has told me in relation to this aspect of the objection that the arrangements for 2022 have been drafted in accordance with the guidance which had been provided to it by the Gateshead Community Rabbi and the comments made by the adjudicator in ADA3505. The adjudicator in ADA3505 was explicit that the school did not have available to it guidance which met the requirements of paragraph 1.9 i). I have said that since I have only been provided with the same material as in that case, I am of the view that this remains the case. It seems to me that the school cannot have appreciated the import of such guidance, the reasons for which I have laid out afresh above. If the school had indeed produced arrangements which were in accord with ADA3505, it would have sought and received guidance of the sort described by the adjudicator in that case, and so this would have been available in relation to this present case. It is disappointing therefore the school still relies on the correspondence which took place at that time as the only guidance from its faith body.

35. The first element of observance required to demonstrate Charedi practice is “daily Torah study by men”. The arrangements say no more than this. The adjudicator in ADA3505 was of the view that the absence of any clarity as to how much time should be set aside daily for Torah study meant that it was not possible for parents to understand easily how to satisfy this requirement, and so this part of the arrangements failed to satisfy paragraph 1.37 of the Code. The correspondence from the Rabbi of the Gateshead Community quotes the rabbi as saying the following, in response to the question posed by the school “Is it your opinion that a minimum time for Torah study should be specified?” :

“Different individuals have varying demands on their time and are able to commit less or more time to Torah study accordingly. The key in judging this topic is whether Torah study is prioritised sufficiently highly to warrant a regular dedication of time and effort by the father to Torah Study(sic). As a rule, each day should contain some Torah Study(sic) and a fixed schedule should exist.”

36. The school has referred to this in its response to the objection, saying that “the School respectfully submits that the Guidance did not require a fixed Torah study schedule to be spelt out in the admission arrangements.” I agree that the rabbi did not specify a particular schedule, but neither did he say that having one had no value. When I read what the rabbi said at that time, I am much clearer as to what is expected by “daily Torah study” and it seems to me that he advised the admission authority that in judging how a parent prioritised the requirement of daily Torah study, the adoption by him of a fixed schedule would be a meaningful criterion. The school could very easily have used what the rabbi said as a description of the activity of Torah study so described by the rabbi and asked the parent to self-certify whether he did or did not adopt a fixed schedule for Torah study on the SIF. I note here however that in order to be clear, such an observance requirement would also need to specify a duration for which this should take place. The arrangements do say that observance of all four requirements must be for a minimum of five years, and I shall refer to this again below. However, since the school has provided no description of the Torah study requirement in its arrangements, these do not permit parents to easily understand what is required.

37. I note that the objector also referred to the need for the arrangements to ensure that the requirement they contain of attendance at communal prayer is constructed in a way which is fair to single parent families “particularly those headed by women”, since “the Charedi religious requirement of communal prayer does not apply” to women, but did not say in terms that this was not the case. The school responded by saying that the arrangements do make clear that Torah study is only required of men, and that in any case having different religious requirements for the sexes does not offend against Equalities legislation (in its view). The SIF asks parents to confirm their adherence to “the Charedi criteria” in the arrangements (which include the requirement of attendance at communal prayer as well as that of Torah study for men) and ask a rabbi to certify that these publicly performed religious observances take place without saying how this would be expected to happen for family units of the sort about which the objector has raised a concern. However, the wording of the relevant part of the arrangements does refer to fathers only (as the school points out), and while I think it would be helpful were the arrangements themselves or the SIF to make explicit that there would be no disadvantage in demonstrating Charedi practice in the way the objector is concerned about, I say no more on this point.

38. The second element of Charedi practice is Mitzvos observance, which is observance of Torah commandments. The objector has had nothing specific to say concerning this. However, there was an objection regarding the clarity of what is required to demonstrate Mitzvos observance in ADA3505 concerning the arrangements as they were determined for admissions in 2020. I note that the adjudicator in that case came to the view that, were the arrangements to allow self-certification by parents of practice observed in private and were the requirements as to that practice to be clear, then this could be Code-compliant. He pointed out that the school had addressed the issue of the clarity provided to parents by stating, in line with the correspondence from the Gateshead rabbi (who had been asked to comment on the need for clarity concerning observance of Torah commandments), that Charedi religious practice should be “in accordance with the Code of Law known as the Shulchan Aruch and its commentaries”. The arrangements for 2022 contain the same wording, and the SIF is clear that rabbinical confirmation is only needed with respect to public religious observance. These same considerations apply, it seems to me, to the third element, which is Yiras Shomayim, behaving in private as one would do in public, which again the objector has made no specific reference to.

39. However, in further correspondence the objector did make explicit a source of concern regarding the objection about the clarity of the descriptions of Charedi Judaism in the arrangements, saying that the phrase “extremely modest” was unclear since the arrangements did not say to exactly which matters this referred. The school responded by saying that the arrangements respond to the requirement of the adjudicator in ADA3505 that “modesty” be clarified and that they do so by, again, stating that Charedi practice is to be observed “in accordance with the Code of Law known as the Shulchan Aruch and its commentaries”, which the arrangements say includes the requirements of the fourth element, Tzenius, “modesty of dress, speech and behaviour” and that an appendix sets out what modesty of dress means. It seems to me that these aspects of the arrangements generally (other than the phrase “very brightly coloured” which is used in the appendix to

the arrangements to describe proscribed clothing for Charedi females and which I will consider below) do allow the reader to know what is meant, and I do not uphold this aspect of the objection.

40. Taking all these matters together, then, I uphold the objection that the arrangements are not clear in their description of Charedi practice with respect to Torah study and so the arrangements fail to comply with paragraph 1.37 of the Code, and I uphold this aspect of the objection.

41. As part of its response to the objection that the religious observance requirement was unclear, the school said that if the arrangements and the SIF were read together, then it would be clear to a reader that the requirement was that the duration for which Charedi practice needed to be demonstrated was a period of five years. The objector pointed out in subsequent correspondence that the guidance from the Gateshead Community Rabbi on which the school relied made no mention of the need for observance to be for five years. The school told me that it was of the view that this was not necessary and that “the requirement under paragraph 1.38 of the Code is only for an admission authority to consult [its faith body] over the type of religious practice requirements to be demonstrated by applicants, not the length of observance of that practice” and that “...the practice of Charedi Jewish observance is a way of life. It therefore requires a certain period of time to become adjusted and genuinely committed to. Consequently, in order to reflect these sustained requirements ...the Governors regard a 5-year period as being a minimum length of time required to demonstratecommitment to Charedi Judaism.”

42. Paragraph 1.38 of the Code says:

“Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements They **must**consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.”

I do not regard “how membership or practice is to be demonstrated” as referring only to the facts of observance (that is, what is done) and necessarily not to their duration, as the school would have me believe, since “how” in this context can certainly include both “what” and “for how long”, in my view. As the school puts it, Charedi practice is a way of life, and it is unquestionably the case that this way of life includes religious activities. Paragraph 1.9i) of the Code applies to religious activities. For the school to employ religious activities in its admission arrangements these must be laid out by its faith body for this purpose in relevant guidance. Moreover, 1.9i also provides that no hobbies or activities of any sort may be taken into account by a school in its admission arrangements unless they are religious activities which have been laid out by the faith body for a school which has been designated as having a religious character.

43. In order for the arrangements to be clear, it is necessary for them to state the duration of Charedi practice which parents must have observed, which they do. I would expect the school's faith body to provide it with guidance about the duration of Charedi practice, since this is (as I say) part of how membership or practice is to be demonstrated. Since the school must "have regard" to such guidance, it could depart from it if, it had a clear and proper reason to do so. In the absence of such guidance and the school's response to it, it has not been possible for me to form a view concerning the opinion of the objector expressed late in the exchange of correspondence, and not therefore treated as a formal part of the objection, that the duration of five years of Charedi practice required by the school may be unfair to some Charedi families. I would expect the school to seek guidance on this matter from its faith body, now that it is able to do so.

The role of the school's Admissions Committee and associated issues

44. The five remaining aspects of the objection are related, since they all concern the role of the school's Admissions Committee. The arrangements as determined, and as seen by the objector, contained the following passage:

"A Charedi girl must observe and practice (sic) orthodox Jewish traditions and practices as set outWith respect to *tznius* and internet access, the current school guidelines are stated in appendices A and B to this document respectively. In the event of any dispute as to whether a child meets these criteria, the decision will rest with the Rabbinical Admissions Advisory Committee of the Menorah High School for Girls Trust (acting as a committee of the Governing Body (sic)) based solely on the certification information provided in the supplementary information form (SIF) completed in relation to that child. As an admission authority we have the right to investigate any concerns we may have about your application and to withdraw the offer of a place if we consider there is evidence that you have made a fraudulent claim or provided misleading information which denied a place to another child. We reserve the right to check information provided so we can apply the oversubscription criteria accurately and fairly."

45. My understanding is that in the different elements of the objection which are based on this passage, the objector complains, variously, that it renders the arrangements:

- (i) unclear as to whether the self-certification of the private practice or the rabbinical confirmation of the public practice of a parent attested to on the SIF stand by themselves, or not;
- (ii) unclear as to the circumstances which would give rise to the school having doubts about applications and so are also procedurally unfair as some applications could be subjected to an additional level of scrutiny, the reason for which is not explained, and potentially discriminatory as to which applications might be subject to such scrutiny (and a further complaint was that the procedure itself did not conform to the rules of natural justice);

- (iii) unclear regarding the evidence that would be used by the Advisory Committee in making a decision on these matters, and
- (iv) unclear concerning the membership of the Advisory Committee.

46. When the school responded to the objection, it said that the sentence: "In the event of any dispute.....in relation to that child" had been removed from the arrangements, and a copy of these revised arrangements was sent to me. I therefore asked the school for evidence of this re-determination and was provided with the minutes of a meeting of the school's governing board which had taken place on 14 July 2021 which referred to "slight amendments" to the arrangements "with regard to the process of challenging any applicants thought to be fraudulent", but which did not specify what these changes were. However, the revised arrangements which had been sent to me did contain the change reported by the school. The school then asked me to accept that, with the reference to the Advisory Committee removed, the arrangements and the SIF when read together meant that "it is using a clear and objective method of certification, comprising:

- a) self-certification by the applicant regarding both private and public religious practice observance;
- b) further positive certification of the public observance element by the applicant's Rabbi; and
- c) the opportunity for that Rabbi to produce evidence contradicting the Applicant's (sic) self-certification of the private element."

47. I take the view that this is indeed what the arrangements in their revised form mean and that this does constitute a clear process of certification of the religious practice elements of the arrangements, which can also be objective provided that the matters which are the subject of self-certification are themselves clear and objective. I note in saying this that the SIF contains the following guidance to the rabbi; "If you have objective evidence that any of the applicant and/or her parent(s) do not meet the elements of the above Charedi religious requirements which are conducted in private, please do not sign this form and provide that evidence to the School." I think it would make it even clearer that the process is one of self-certification with respect to religious observance carried out in private were that guidance to ask the rabbi to sign unless he had objective evidence that he should not.

48. As they were originally determined however, the arrangements did include a role for the Advisory Committee in interpreting the information provided on the SIF, and this left the status of the matters attested to by parents and their rabbi on the SIF uncertain, since it left it unclear whether self-certification was the process in place. This in turn made the arrangements unclear both in respect of the status of a parent's self-certification and of how the Advisory Committee would carry out this function, in breach of paragraph 1.8 of the Code. I uphold both of these aspects of the objection.

49. Second, the objector said that there is a procedural unfairness which results from the fact that the arrangements do not explain why some applications would be subject to more scrutiny than others, referring again to the role of the Advisory Committee and to what the arrangements say about the school's right to investigate any suggestions that applications are fraudulent or based on misleading information. In its response, the school referred to the removal of the reference to the Advisory Committee in its revised arrangements, and by telling me that:

“The school must be entitled to investigate such cases so that it can rely on its powers under paragraphs 2.12 and 2.13 of the Code to withdraw a place where it has been obtained fraudulently or as a result of an intentionally misleading application, in particular if the School becomes aware of evidence that contradicts the certification of religious practice in an applicant's SIF. The Governing Body does not actively seek out evidence of this nature regarding applications.....no investigations have been made to date.....the process only kicks in if the Governing Body receives evidence which indicates the information received about any pupil could be fraudulent or misleading.....any evidence which indicates that the application may be fraudulent or misleading can and will be investigated, as allowed for under the Code.”

50. Paragraphs 2.12 and 2.13 of the 2014 Code are now paragraphs 2.13 and 2.14 of the Code now in force. These refer to the circumstances under which a school may withdraw the offer of a place which has been made, which include where “....it is established that the offer was obtained through a fraudulent or intentionally misleading application.”

51. The objector complained that since the school had declined to say how it would come by evidence concerning the private observance of religious requirements, it was more likely that this would be possible on the basis of personal knowledge of the applicants on the part of governors, and that this was therefore discriminatory. The school had referred me to the adjudicator's view in ADA3380, which concerned the admission arrangements of a voluntary aided primary school with a Jewish religious character, saying that the third element of the process of certification now contained in the arrangements “meets the concerns of the Adjudicator in ADA3380 about the Rabbi not being able to positively certify this private element with sufficient objectivity.” In that case, in which the private elements of observance required an affirmation by a rabbi, the adjudicator found that it was not possible for this to happen in an objective manner. I have understood the school's statement here to cast this third element of the certification in a different light since, as the school now employs it, there is no certification by a rabbi concerning observance that takes place in private but instead any objective evidence which the rabbi believes he has that what a parent has said may be inaccurate will be investigated further.

52. I am of the view that self-certification should be just that, and for that reason a role for the school's Advisory Committee in overseeing such certification is inappropriate, as I have said above. But it is also the case that the Code anticipates the possibility that an

admission authority might have evidence given to it concerning matters relevant to the veracity of an application, although I think it the case that this was framed more in relation to matters which can be publicly verified (such as someone's address) rather than what is at issue here. However, if a rabbi did have evidence of the sort referred to above, he would be unable to countersign an applicant's SIF, and that is what the arrangements provide, even those as originally determined, which included a reference to the Advisory Committee. Whether some parents are more likely to be in this position as applicants for a place at the school as the objector contends I cannot say, since it is not apparent how any such evidence would come to light. I certainly have no information other than the objector's view that this would be the case, and no evidence therefore of any potentially discriminatory effect. I can only imagine that the rabbi coming into possession of information which leads to concerns about an application would be extremely uncommon, and I am mindful that the school has committed itself to ensuring that any such case would be handled in accordance with the requirements of natural justice (as I shall explain below). I do not consider that there is a procedural unfairness because some applications may be subject to more scrutiny in these circumstances than others, and I do not uphold this aspect of the objection.

53. As to the manner by which such evidence might come into the possession of the rabbi, the school has said to me that the Code is silent with respect to any requirement that such matters should be specified, and this is so. I do not consider that the possibility of there being such evidence in some cases by an unspecified means causes there to be a procedural unfairness and therefore a breach of what the Code requires. I do not uphold this aspect of the objection.

54. The school had already responded to the further view expressed by the objector that the arrangements resulted in a procedural unfairness concerning how parents whose application was thought to be potentially fraudulent would be informed and the matter dealt with, by accepting this point and proposing an additional paragraph in the arrangements setting out a procedure for doing so. This was included in the revised arrangements which were sent to me. I take the view that the Code requires that any procedures that might result in one child being admitted and another not being should accord with the principles of natural justice, although it would be unusual for the arrangements themselves to set out the full procedure for the circumstances which apply here. The revised arrangements now do include a statement of the school's procedure, but the absence of one in the arrangements as originally determined does not mean that the school's procedure prior to it doing so was inappropriate, and is something concerning which I have been given no evidence. The objection simply says that the arrangements do not state the procedure used to investigate possible fraudulent or misleading applications, and although the school "accepted" the objection and revised its arrangements, I do not uphold this aspect of the objection.

55. Finally, in response to the objection that the arrangements are unclear because the identity of the members of the Advisory Committee is unknown, the school has told me its composition, and that it is in effect a governors' sub-committee which meets on an ad hoc basis and that any decisions it makes are subject to ratification by the school's governing

board. The arrangements no longer make reference to it, but as determined they gave the Advisory Committee a specific role concerning admissions, and it was not possible for a reader to understand how the Advisory Committee was related to the school and this made the arrangements unclear. I uphold this aspect of the objection.

Other Matters

56. The school has told me that “its ‘own faith’ designation is Charedi Jewish practice” and that it is permissible for a school to give priority to looked after and previously looked after children “of their own faith”. It says that Children “of the ‘faith’ must logically be defined as sharers of the same principles of a faith, here, the Charedi principles.”

57. I have given the details of the Statutory Instrument which was made for the school when it entered the state-funded system of schools as a voluntary aided school, which designated it as a school having a faith character of Jewish. Paragraph 1.37 of the Code has the following to say:

“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.”

This is set out more plainly in the 2012 regulations, where regulation 9, cited as a footnote to paragraph 1.37 of the Code, refers to children “of the same faith as that of the school according to its designation”, making it clear that the term “the faith” in the Code means the faith character of the school, as designated. The school’s arrangements do not give priority to all looked after and previously looked after Jewish girls, but only to those who are Charedi, and as the arrangements also make plain, this does not include all Jewish girls. As a result, the arrangements fail to comply with the requirement set out in paragraph 1.37 of the Code.

58. The school has put it to me that if it were required to give priority to all Jewish looked after and previously looked after girls, “then a dual SIF system would need to be introduced to show that the looked after and previously looked after Jewish girls could demonstrate their faith. The school submit that this could lead to confusion and would therefore not uphold the principles of clarity as required under the Code.”

59. It is plain that the school is required to give priority to all Jewish looked after and previously looked after girls. It is a matter for the school as admission authority, in conjunction with its faith body in the way described in the Code and set out above, to determine its faith-based admission arrangements and therefore what is and what is not required for a Jewish looked after girl to be given priority for admission. In doing so, it will

need to avoid breaching the statutory requirements, such as the need for clarity, set out in the Code. In other words, this is a matter for the school and its faith body to wrestle with.

60. When it responded to my concerns about the clarity and objectivity of the phrases “acceptable information” and “inappropriate material”, the school told me that the revised version of its arrangements no longer contained the former phrase, and it proposed a definition of the latter. However, as originally determined, the arrangements did contain both phrases without definition and these failed to be clear or objective, and the arrangements failed to comply with what paragraph 14 of the Code requires.

61. The school’s view of my further concern that the phrase “very brightly coloured” could not be objectively assessed was that this was clear, and that it should remain in place. It said:

“As regards anyone being able to understand the plain meaning of these words, the use of “very” is sufficient for any person to understand their meaning, ie extraordinarily brightly coloured.”

The Code does not provide a definition of “objective”, but I understand it to have the everyday meaning of that word when applied to the context in which it appears in the Code. It means that oversubscription criteria which might reasonably be understood differently by different people are not permitted and it is a requirement that applies to all oversubscription criteria, whether faith-based or not.

62. The school said that the phrase to which I have drawn attention “sums up clearly and concisely” the fact that “clothing that is immodest due to being loud and drawing attention to the young lady wearing it is not Charedi practice”. It is of course appropriate for the admission authority for a school with a religious character to be able to describe what it considers to be relevant aspects of religious observance, but that in itself is not sufficient for the matter in question to form part of the arrangements which it uses to distinguish between applicants for places, since these must themselves be objective in nature and not rely on any subjective judgements.

63. I do not consider that the phrase “very brightly coloured”, or for that matter “extraordinarily brightly coloured”, would be understood to mean exactly the same thing by all readers of the arrangements. The phrase is not objective in nature, and it renders the arrangements in breach of the requirement of objectivity in paragraph 1.8 of the Code.

Summary of Findings

64. For the reasons which I have given above, I am of the view that the arrangements, as originally determined, fail to comply with what the Code requires because:

- (i) the guidance provided to the school by the body which it has believed to be its designated faith body does not constitute guidance of the sort specified by

Cobb J as that necessary to authorise religious activities which may be taken into account in its faith-based oversubscription criteria;

- (ii) they do not describe clearly what a parent must do to comply with the requirement of Torah study, and I have noted that the requirement of five years of observance has not been laid out in guidance that has been available from the school's faith body;
- (iii) they are unclear as to whether the self-certification by a parent concerning aspects of religious observance which take place in private are subject to rabbinical verification;
- (iv) they do not make clear how the Advisory Committee would carry out the function described in the arrangements;
- (v) they do not make clear the status and membership of the Admissions Advisory Committee;
- (vi) they do not give priority to all Jewish looked after or previously looked after children;
- (vii) they contain phrases which are unclear or not objective in nature.

65. For the reasons which I have given above, I find that the arrangements do not fail to comply with what the Code requires concerning:

- (i) the source of any evidence concerning potentially fraudulent or misleading applications;
- (ii) the potentially discriminatory effect of investigations into some applications, and
- (iii) the procedure used in the investigation of potentially fraudulent or misleading applications.

Determination

66. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by the governing board for Menorah High School for Girls, Barnet.

67. 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.

68. 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 as soon as possible after 28 February 2022, and no later than 31 March 2022.

Dated: 23 February 2022

Signed:

Schools Adjudicator: Dr Bryan Slater

Addendum concerning the school's prescribed faith body

At the date of the objection, no faith body had been prescribed for the school and therefore no such body has laid down for its use religious activities that may be taken into account in oversubscription criteria, as required by paragraph 1.9i of the Code. The use of all such matters in the arrangements which define Charedi Judaism (which include attending synagogue, observing dietary and dress requirements, study of the Torah and other requirements such as those concerning internet access) cannot as a result meet the requirements of the Code.

However, as described above, amendment regulations which are about to come into force will provide the school with a Rabbinic Authority, the role of which in relation to the faith-related oversubscription criteria employed by the school in its admission arrangements is as set out in this determination.

The school is required to determine admission arrangements for September 2023 no later than 28 February 2022 and will need to amend its arrangements for September 2022 in accordance with this determination.