



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** REF3898

**Referrer:** A Parent

**Admission authority:** The Governing Board of Islamia Primary School,  
Brent, London

**Date of decision:** 21 October 2022

## Determination

I have considered the admission arrangements for September 2022 and 2023 for Islamia Primary School, Brent in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters raised in the referral, the arrangements in part do not conform with the relevant legislative requirements. I have also found that there are other matters in both sets of arrangements which are not mentioned in the referral and 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. I do not require the admission authority to revise its admission arrangements for September 2022. The admission authority is required to revise its admission arrangements for September 2023 by 30 November 2022.

## The referral

1. The admission arrangements for 2022 (the arrangements) of Islamia Primary School (the school), a voluntary aided (VA) school in the London Borough of Brent with a Muslim religious character, were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body, which is

the admission authority for the school. An objection had previously been made by a parent to the arrangements and a determination, ADA3836, dated 5 January 2022, was published in response to that objection. Solicitors acting for the objector issued a pre-action protocol letter (PAP letter) dated 31 January 2022 in accordance with the pre-action protocol for judicial review. The Government Legal Department responded, on behalf of the Chief Adjudicator, by a letter dated 15 February 2022 in which it was agreed that the matter would be referred to a new Adjudicator to consider afresh. Determination ADA3836 is overtaken by this determination.

2. I am treating the solicitors' PAP letter dated 31 January 2022 (the 31 January LBC) as a referral and will refer to the objector from now on as the Referrer. Having considered the matters raised and the remedies proposed by the Referrer's solicitors, I have decided to consider the admission arrangements under section 88I of the Act. I am satisfied that it is within my jurisdiction to consider the arrangements.

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

## **Jurisdiction**

4. This matter was referred to me on 15 February 2022. That date is after 15 January 2022, the national closing date for primary school applications. National offer day for primary schools is 15 April 2022. Consequently, I will not require the admission authority to change its admission arrangements for September 2022. I have also considered the admission arrangements for 2023 under Section 88I of the Act. Save for an amendment to oversubscription Criterion a. made in order to comply with a requirement of the new School Admissions Code which came into force in September 2021, the oversubscription criteria are identical to the admission arrangements for 2022. As the outcome of this determination will primarily affect the admission arrangements for 2023 references to the admission arrangements will be references to the 2023 admission arrangements except where I specify otherwise.

## **Procedure**

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

6. I have considered all the documents before me, including:

- a) the referrer's form of objection and objection paper dated 11 May 2021;

- b) copies of the determined admission arrangements for 2022 and 2023, including the supplementary information form (SIF) in each case;
- c) the referrer's solicitor's PAP letter dated 31 January 2022;
- d) comments from the governing board on the matters raised and supporting documents;
- e) comments from the local authority on the matters raised, supporting documents and subsequent correspondence;
- f) further comments and submissions from the Referrer and the Referrer's solicitors;
- g) comments from the Association of Muslim Schools UK;
- h) An email from the referrer's solicitors dated 9 June 2022 (the 9 June 2022 letter) setting out "a list of each separate points referred to the adjudicator as an objection to Islamia Primary School's admission arrangements".

## The Referral

7. The issues raised by the Referrer were clarified by the Referrer's solicitors in the 9 June 2022 letter, as follows:

1. Criterion c.

"Muslim children of at least one parent who has reverted to Islam (not born in the Islamic faith). Up to a maximum of 25% (15 children) of the published admissions number."

Whether this criterion is:

- a) directly discriminatory on grounds of race contrary to s.13 of the Equality Act 2010 (EqA 2010) and related sections of the School Admissions Code (the Code);
- b) indirectly discriminatory on grounds of race contrary to s.19 EqA 2010 and related sections of Code;
- c) contrary to article 14 ECHR read with article 2 protocol 1 ECHR – direct discrimination on basis of other status (i.e. whether or not born Muslim, or birth);
- d) not 'reasonable' in prioritising on grounds of past faith contrary to para 1.8 of the Code;
- e) not compliant with paragraph 1.9(i) of the Code in that;

- a. it does not fall within the exception to religious discrimination in admissions and is consequently prohibited by section 85 EQA 2010 as set out in para 5 schedule 11 of that Act;
- b. it is not a religious activity laid out by the Association of Muslim Schools.

2. Criterion d.

“Muslim children of parents who are former pupils of the school (alumni) since it became a Voluntary Aided school (post May 1998). Up to a maximum of 10% (6 children) of the published admissions number.”

Whether this criterion is:

- a) Indirectly discriminatory on grounds of race (contrary to s.19 EqA 2010 and related sections of the Code);
- b) Contrary to article 14 ECHR read with article 2 protocol 1 ECHR (Indirect discrimination on basis of other status against recent refugees/ first generation immigrant parents as well as nationalities that have arrived in UK in more recent years)
- c) Not ‘reasonable’ – contrary to para 1.8 of the Code.
- d) Contrary to paragraph 1.9(b) of the Code;
- e) Contrary to paragraph 1.9(e) of the Code; and
- f) Contrary to paragraph 1.9(i) of the Code.

A point is also taken on the relative priority of the criteria, namely the relative priority given to criteria c. and d. as compared to criterion e. (siblings) and criterion f. (other Muslim children).

## **Other matters not referred by Referrer**

8. I have also considered whether there is a lack of clarity in the oversubscription criteria in relation to the definition of “Muslim children” and the application of the “religious practice test”. I will deal with these points towards the end of this determination under the heading Other Matters.

## **Background**

9. The school is a primary school for 4 to 11 year old pupils located in the London Borough of Brent. The school opened in 1983 as an independent school. It became a maintained school (voluntary aided) in 1998. The school is the only Muslim school catering for primary aged children in Brent (the nearest outside the borough being Barnet Hill Academy in Barnet). The PAN for admission to the reception year (YR) in

September 2022 and September 2023 is 60. Historically, the school has been oversubscribed. It is likely to continue to be oversubscribed in future years.

10. The oversubscription criteria for the 2023 admission arrangements read as follows:

“Over-subscription Criteria

1. If Islamia Primary School receives fewer applications than the Published Admission Number, then all those applying will be offered places.

2. If Islamia Primary School receives more applications than the Published Admission Number, after children with an Education, Health Care Plan in which Islamia Primary School is named have been admitted, admissions will be dealt with by applying the following criteria in the order set out below:

a. Looked after children, previously looked after Muslim children and internationally adopted previously looked after Muslim children who meet the religious practice test.

b. Children of Muslim staff where the member of staff has been employed at Islamia Primary School (IPS) for two or more years at the time at which the application for admission to Islamia Primary School (IPS) is made or the member of staff is recruited to fill a vacant post for which there is a staff shortage.

c. Muslim children of at least one parent who has reverted to Islam (not born in the Islamic faith). Up to a maximum of 25% (15 children) of the published admissions number.

d. Muslim children of parents who are former pupils of the school (alumni) since it became a Voluntary Aided school (post May 1998). Up to a maximum of 10% (6 children) of the published admissions number.

e. Muslim children who have a sibling at Islamia Primary School (IPS) or a sibling who is due to be attending this school at the proposed date of admission of the applicant.

f. Other Muslim children who meet the religious practice test who do not have a sibling at Islamia Primary School (IPS) or a sibling who is due to be attending this school at the Proposed date of admission of the applicant.

g. Any other looked after children, previously looked after children or internationally adopted previously looked after children.

h. Any other children based upon distance from the school.”

11. Criterion c uses the word “reverted”. I will refer throughout this determination to “converted” and “convert”. Any difference in meaning is not material to the issues I am considering.

#### The Supplementary Information Form

12. A copy of the Supplementary Information Form is attached as Annex A to this determination.

#### Legal provisions

13. Paragraph 1.10 of the Code sets out the basic principle that “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances”.

14. Paragraph 1.1 of the Code sets out the compliance duty of admission authorities: “Admission authorities are responsible for admissions and **must** act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions, and relevant human rights and equalities legislation”.

15. Paragraph 14 of the Code sets out the “Overall principles behind setting arrangements” as “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”.

16. Paragraph 1.8 of the Code sets out the requirements for oversubscription criteria: “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated”.

17. Paragraph 1.9 of the Code begins with a statement of principle and goes on to list matters which are proscribed in the admission arrangements. I will set out here parts relevant to this determination:

“It is for admission authorities to formulate their admission arrangements, but they **must not**:

- b) take into account any previous schools attended, unless it is a named feeder school;
- e) give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority; and
- i) 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)"

18. I will set out below relevant parts of the Equality Act 2010 (EqA2010).

#### 4 The protected characteristics

The following characteristics are protected characteristics—

- race;
- religion or belief;

#### 9 Race

(1) Race includes—

- (a) colour;
- (b) nationality;
- (c) ethnic or national origins.

(2) In relation to the protected characteristic of race—

- (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.

(3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.

(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

#### 10 Religion or belief

(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

(3) In relation to the protected characteristic of religion or belief—

- (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;
- (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

### 13 Direct discrimination

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

### 19 Indirect discrimination

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

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

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—  
race;  
religion or belief;

### 85 Pupils: admission and treatment, etc

(1) The responsible body of a school to which this section applies must not discriminate against a person—

- (a) in the arrangements it makes for deciding who is offered admission as a pupil;
- (b) as to the terms on which it offers to admit the person as a pupil;
- (c) by not admitting the person as a pupil.



## **Schedule 11**

### **PART 2**

#### **RELIGIOUS OR BELIEF-RELATED DISCRIMINATION SCHOOLS WITH RELIGIOUS CHARACTER ETC**

5 Section 85(1) and (2)(a) to (d), so far as relating to religion or belief, does not apply in relation to—

(a) a school designated under section [68A or] 69(3) of the School Standards and Framework Act 1998 (foundation or voluntary school with religious character);

19. The relevant provisions of the European Convention on Human Rights (ECHR) are:

#### **THE FIRST PROTOCOL**

##### **Article 2 Right to education**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

##### **Article 14**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## **Consideration of Case**

20. Since discrimination arguments are at the forefront of the Referral, I make some general observations before considering the Criteria at issue.

### **Discrimination under EqA2010**

21. If there is unlawful discrimination in this case it is made unlawful by section 85 of the EqA2010. Section 85 (1) reads:

“(1) The responsible body of a school to which this section applies must not discriminate against a person—

- (a) in the arrangements it makes for deciding who is offered admission as a pupil;
- (b) as to the terms on which it offers to admit the person as a pupil;
- (c) by not admitting the person as a pupil.”

22. “A” is the governing board for the school, which is the admission authority and so is “the responsible body” of the school.

23. I am concerned with the provision in section 85(1) (a). For present purposes, “B” is a pupil.

24. In general, under the EqA2010, treating somebody less favourably because of their religion will be unlawful direct discrimination. However, the school here is a faith school. It is designated by the Secretary of State as having a religious character. Paragraph 1.36 of the Code states:

“Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed”

25. Paragraph 5 of Part 2 of Schedule 11 of the EqA2010 provides that the relevant parts of Section 85 do not apply to a school designated as a faith school. The general priority given to Muslim children is not unlawful discrimination under the EqA2010 and is permitted under paragraph 1.36 of the Code.

### **Discrimination under criterion c**

26. Criterion c reads: “Muslim children of at least one parent who has reverted to Islam (not born in the Islamic faith). Up to a maximum of 25% (15 children) of the published admissions number”

27. In order to fall into this category a child must a) be a Muslim child, b) have at least one parent who is a Muslim and c) that parent must have become a Muslim by conversion.

### Discrimination on grounds of race

28. The Referrer’s primary arguments in relation to criterion c are of race discrimination. In order to consider an argument of race discrimination, it is necessary to identify the race, or races, said to be discriminated against.

29. I therefore asked the Referrer to provide the following information:

“The particular racial group or groups (as defined in section 9 of the Equality Act 2010 (the Act)) membership of which constitutes the relevant protected characteristic for direct discrimination (section 13 of the Act) and indirect discrimination (section 19 of the Act)”.

30. The response (in its material part) was as follows:

“Obviously, one of the groups which concerns me are children who have two parents of ethnic Somali heritage (living in Brent/ London). That is not the only group. As set out in the LBA [the 31 January LBC], there will also be other specific groups who will be in a similar position to Somalis (i.e. those living in London with national origins from those countries that are overwhelming (or all) Muslim by birth and therefore could not be converts) – obvious examples would be Afghanis, Saudis, Kuwaitis, Iraqis, Syrians and so forth”.

31. In essence the Referrer wishes me to consider any racial group consisting predominantly or wholly of born Muslims, who cannot convert to Islam. Those groups collectively do not form a single racial group. Since the Referrer refers principally to Somalis and does not suggest that the discrimination arguments would be any stronger if a different racial group were considered in lieu of Somalis, I will, to avoid repetition, treat Somalis as the racial group I am considering. For the avoidance of doubt, I have considered whether my ultimate conclusions below would be any different if one of the races referred to by the Referrer other than Somali were to be regarded as the race at issue, and do not consider that they would.

#### Direct discrimination

32. The Referrer says that Somali prospective pupils will not have, or are much less likely than non-Somali prospective pupils to have, at least one parent who is a convert to Islam. It is or must be contended for the purposes of the direct race discrimination argument that, since they are less likely to satisfy it, criterion c treats Somalis less favourably than non-Somalis *because* they are Somali.

33. Criterion c does not overtly refer to Somalis, or prospective pupils of any particular race. Such direct identification is the usual requirement of direct discrimination on grounds of race. For example, a sign outside a hotel in Essex which stated “No English” would constitute direct discrimination. On the face of it, whether or not a prospective pupil satisfies criterion c depends not on their race but on whether they have at least one parent who has converted to Islam.

34. However, the matter does not quite end there, because it is necessary to consider whether the criterion is nevertheless indissociable from, or a proxy for, a

race-based criterion. Direct discrimination may arise in circumstances in which there is an exact correspondence between the criterion and the protected characteristic. A well-known example of such direct discrimination concerned a Council which allowed free entry to a swimming pool for men and women who had reached retirement age. At the time all women reached retirement age at 60 and all men at 65. Thus, from the age of 60 all women enjoyed a benefit which men aged 60 or above but less than 65 did not. This was direct discrimination based on the protected characteristic of sex. In essence the point was that of all people aged between 60 and 65, all women could meet the condition and all men could not.

35. The question here is whether there is an exact correspondence between, on the one hand, the overt reason why a pupil would not fall within the criterion, namely that they do not have a Muslim convert parent, and, on the other hand, their race (taken here to be Somali).

36. I do not consider that there is an exact correspondence of the sort required. I appreciate that the Referrer has contended that at least the great majority (if not all) of Muslim Somalis will have parents who are born Muslim, as opposed to having a parent at least one of whom is a convert. However, first, the material before me does not indicate that that is invariably the position as a matter of fact: in paragraph 13 of the original Objection, the Referrer states rather that there are “virtually” none who convert; and in paragraph 5 of the same document, it is accepted that there may be a “handful” of converts in Somalia and only “probably” none in the UK. I have not overlooked the Referrer’s contention that no Somalis in the local area will have a convert parent, but that contention needs to be seen in light of the way that the position is described elsewhere. Secondly, even on the assumption that, as a matter of fact, no Somali child who might wish to attend the school would have a convert parent, that does not mean that there is the exact correspondence required for direct discrimination to occur. It is plainly possible, however seldom it may occur, for the parent of a Somali child to be a Muslim convert. Any Somali may have a child by a person not born Muslim, which person may be a Muslim convert. The overt criterion and the claimed race-based criterion are therefore dissociable. On that basis also, there is not exact correspondence.

37. It follows that I do not consider that criterion c is directly race discriminatory.

#### Indirect Discrimination

38. Section 19 (1) of the EqA2010 reads:

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

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

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

39. In relation to the stages of the analysis required by s.19(2)(a)-(c), the Referrer does or has to say that (a) criterion c is applied by the admissions authority both to Somali and non-Somali applicants; (b) that it would put the Somali applicants at a particular disadvantage when compared with the non-Somali applicants – because the Somalis are less likely to satisfy it because they are less likely to have a convert parent; and (c) criterion c would put a Somali child at that disadvantage.

40. The Referrer has given examples of races other than the Somali race where it is more likely that the child will have a Muslim convert parent. These include “white Caucasian, Italian, and black Caribbean children”. For the purposes of this determination, I am prepared to accept that that is factually so. On that basis I accept that criterion c is likely to give rise to the disadvantage required as part of the analysis mandated by section 19(2)(a)-(c).

41. On that basis, the question is then whether the school can show the criterion to be a proportionate means of achieving a legitimate aim.

42. The school have set out the reasons for the convert condition as follows:

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

Furthermore, support for reverts has always been an important aspect of the admissions process at Islamia Primary School as it was and remains an aspect that is very close to the heart of the Yusuf Islam Foundation. It is nothing new.

Reverts were considered a priority group with a specific number of points awarded to the applicant in this category. It was only when the point system was extensively reviewed and eventually terminated that the revert category was 'lost' in the process and has now been reinstated as part of the admission policy, as opposed to a measure of practice in the supplementary information form.

Just as the Admissions Code sets out to protect and positively discriminate in favour of vulnerable members of society such as for example Looked after Children, in the same vein the Admissions Authority has long been aware of the vulnerability of reverts and their children and seeks to support them. Unquestionably, the Admissions Authority aims to follow the Code to the letter but also has an obligation to the Yusuf Islam Foundation. The reasoning is that by attending Islamia Primary School the pupils who obtain a place through this criterion will be able, with their family to build up a strong network of friends and overall support”.

43. I view criterion c as akin to a social need criterion. It is, as the school says, intended to protect or further the position of a group of pupils having a particular vulnerability associated with conversion. I do not understand the Referrer seriously to dispute the vulnerability associated with conversion. Indeed, in the PAP letter dated 31 January 2022 the Referrer’s solicitor stated:

“The reports relied on by the adjudicator [in ADA3836] show considerable doubt is cast by converts of the wisdom of sending their children to Islamic Schools - the male perspective report, page 11, notes that “In schools with a majority of heritage Muslim children, pupils of convert background may suffer cultural dislocation, discrimination and bullying”. It later continues, in a section titled Children, there is reference to “The daughters and sons of converts were not infrequently marginalised in the Muslim community and at Muslim schools.” The report sets out ample reasons as to why a Muslim school might not necessarily be in the best interests of convert parents’ children”.

44. I find it to be a seriously worrying proposition that the children of converts may be treated badly at Muslim schools or that it may not be in their best interests to attend such schools because of their vulnerability, and that consequently convert parents should not choose to send their children to Muslim schools. I have no hesitation in concluding that the aim of protecting or furthering the position of a group of children with a vulnerability of this nature is a legitimate aim.

45. **Proportionate.** Is the convert criterion a proportionate means of achieving that aim? There are 60 places available in Reception at the school. Criterion c gives

priority to up to 15 children of converts. That is up to 25 per cent of the places available.

46. Looked after and previously looked after Muslim children are given first priority, as is required by law. Next are children of certain staff. That leaves perhaps 55 places for the remaining categories of child, being: those falling within criterion c, children of alumni (which I will consider next), Muslim children with siblings at the school, and other Muslim children. The last two categories are for children who are not Muslim.

47. In 2021 one child was admitted under criterion c. For 2022 that increased to ten. That significant increase may be because more parents of children who meet the convert criterion applied, as knowledge of that criterion grew in the community, or there may be some other reason. For the 2023 intake that number may fall, or it may increase. In any event the number of children admitted under criterion c will not exceed 15: that is the limit in the criterion itself. I accept that over time the number of children of converts who are admitted may increase as some who are not admitted under criterion c (because the limit of 15 has been reached) may be admitted as siblings of those admitted under criterion c in preceding years.

48. I consider that, for the reasons given by the school, there is not only legitimate but particularly good reason to afford special treatment to children of converts. The rise to ten admissions under criterion c in 2022 suggests that there is a significant population of such children in the local community. I do not accept the Referrer's submission that the school's aim should instead be achieved by wider social initiatives. As to the limit of children who may benefit from the criterion, I find that 25 per cent is, in all the circumstances, proportionate. It allows for a sufficient intake of children with at least one convert parent to provide a peer group for those children, but not unduly at the expense of those who cannot satisfy it.

49. I therefore do not find that criterion c is indirectly race discriminatory.

**Article 14 ECHR read with article 2 protocol 1 ECHR – discrimination on basis of other status (i.e. whether or not born Muslim, or birth)**

50. I remind myself that there are four questions which I need to address in relation to this element of the Referrer's case:

(1) Do the circumstances fall within the ambit of one or more of the Convention rights?

(2) Has there been a difference of treatment between two persons who are in an analogous situation?

(3) Is that difference of treatment on the ground of one of the characteristics listed or other status?

(4) Is there an objective justification for that difference in treatment?

51. Article 2 of the First Protocol to the ECHR concerns the right to education and I have set it out above. The Referrer does not argue that criterion c is in breach of A2P1 read alone.

52. Instead, the argument is one of discrimination, based on Article 14 read together with A2P1. Art 14 reads:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”

53. For Article 14 to come into play, it is sufficient that the measure complained of, namely criterion c, is linked to the exercise of a right guaranteed by the convention, which in this case is said to be the right to education.

54. Every admission authority is under a duty to have oversubscription criteria for each school for which it is responsible. This is an aspect of the State’s delivery of the right to education. A particular oversubscription criterion, which determines priority in accessing education at a particular school, is linked to the general right to education in A2P1. I find that Article 14 taken with A2P1 is applicable.

55. For discrimination to occur under Article 14, it must be on the ground of some ‘status’. Race is given in Article 14 as an example of the sorts of status protected. I have discussed race in relation to domestic law above. The Referrer has not asked me to consider the race issue under the ECHR, but, for the avoidance of doubt, I do not consider that an analysis under Article 14 would lead to a different result.

56. The status I am instead asked to consider is identified by the Referrer as “birth i.e. somebody both of whose parents were born Muslim”. It is said that criterion c is what in the UK would be called directly discriminatory. What is argued is that, on the face of the criterion, a Muslim child cannot satisfy it if both of their parents were born Muslim; whereas a Muslim child at least one of whose parents is not born Muslim may do so. Thus, the child both of whose parents are born Muslim is treated differently. It may be arguable that this is not a child’s ‘status’ for Article 14 purposes or that there is not differential treatment of Muslim children in a truly analogous position. Nevertheless, for the purposes of this Determination, I am prepared to proceed on the basis (without deciding) that the status relied on by the Referrer is protected under Article 14 and that the criterion entails differential treatment in the required sense.



57. Nevertheless, under Article 14, discrimination which in UK terms would be 'direct' may be justified, if there is an objective and reasonable justification for the provision. That is, that there is a legitimate aim and a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

58. For the same reasons that I have set out in my discussion of indirect discrimination under EqA2010 above, I consider that there is justification for the purposes of Article 14. Consequently, there is no breach of Article 14 taken with A2P1.

### **Reasonable: paragraph 1.8 of the Code**

59. The next issue is whether Criterion c is reasonable as required by paragraph 1.8 of the Code. I have asked myself whether the admission authority has demonstrated that the criterion itself and reasons for it are not irrational or illogical.

60. I have set out above the school's reasons for giving priority to the Muslim children of converts. I have found that the provision does not amount to unlawful discrimination under the EqA2010 and the ECHR.

61. The Referrer asks me to consider whether it is reasonable to prioritise "on grounds of past faith". The Referrer says that converts have necessarily not been Muslims prior to conversion. I do not agree that, when characterised in this or any other way, criterion c is unreasonable. I do not consider it unreasonable for the criterion to prioritise children of parents who were non-Muslim before their conversion; that is to say no more than that those parents are converts.

62. I find that Criterion c is rational and is not unreasonable. It is within the range of permissible oversubscription criteria which fall within the provisions of the Code and the relevant legislative provisions.

63. I also find that Criterion c is fair, given the vulnerability of the children of converts. I find it is fair to afford priority to those children for admission to the school.

64. I will consider the issue of the relative priority given to the various oversubscription criteria later in this determination.

### **Paragraph 1.9 of the Code**

65. The final claim is that criterion c is not compliant with paragraph 1.9(i) of the Code. It is necessary to identify what that says. Paragraph 1.9 (i) states 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)”

66. Criterion c requires at least one parent to be a Muslim who has converted to Islam. I do not consider that having converted to Islam is a past or current hobby or activity. Clearly it is not a hobby, and I agree with the Referrer’s solicitors who state “It [“the fact of conversion”] is not an activity”.

67. As I have found that being a Muslim convert is not a hobby or activity I do not need to consider whether or not it is a religious activity or whether it has been “laid out by the body or person representing the religion”.

68. I therefore find that criterion c is compliant with paragraph 1.9 (i) of the Code.

#### **Criterion d**

69. Criterion d reads:

“Muslim children of parents who are former pupils of the school (alumni) since it became a Voluntary Aided school (post May 1998). Up to a maximum of 10% (6 children) of the published admissions number.”

70. It is not fully clear from the words used whether both parents need be alumni or only one at least. Read naturally and in context I take the latter meaning as more likely.

71. The primary argument of the Referrer is that certain Muslim racial groups who have predominantly settled in England since 2005 are less likely to meet the Alumni Condition than those who were settled earlier, because a parent in those families is less likely to have attended the school. It is said that there is no sufficient justification for this disadvantage. Thus, criterion d is said to be indirectly race discriminatory.

72. To illustrate the point: the parent of a 4-year-old applying for entry to the school in September 2023 may have left the school say some 15 to 20 years earlier. If they started at the school in Reception Year, they would have been resident in the vicinity of the school for at least some 20 years to 25 years. Such parents would have been settled, as children, in England by about 2000. But parents who settled as children after that time are less likely to have attended the school.

73. Different races of Muslims have settled in Brent at different times. Afghans and Syrians have settled in Brent more recently, principally as a result of the recent conflicts in those countries. I accept that the information provided by the Referrer on this issue supports that Muslim racial groups who have predominantly settled in England since 2005 are less likely to meet the Alumni Condition than those who were settled earlier. I find that the criteria set out in section 19 (2) (a) to (c) of the EqA2010

are met in respect of predominantly Muslim groups who have settled recently, in particular Afghans and Syrians.

74. I must therefore consider section 19 (2) (d): whether the Alumni Condition is “a proportionate means of achieving a legitimate aim”.

75. The school sets out the reason for adopting the alumni condition as follows:

“As mentioned previously, the diversity of the school population has always been dynamic, reflecting the wider society with no one nationality remaining dominant. Just as the objector mentions the advantage to alumni who were pupils at the school 15-25 years ago, in the same way, less than 10 years from now the current pupils will be Alumni and be able to take advantage of criterion d. The Admissions Authority has not brought in this criterion to discriminate but to help all its pupils, past and present to remain just that, a community.

The school changed from being an independent school to Voluntary-aided in May 1998 and the Admissions Authority has been vigilant in ensuring that the alumni category only includes those pupils who attended post Voluntary-aided status.

Being the first Muslim school to be public-funded and recognised as ‘Yusuf Islam’s school’, naturally parents have very high expectations. However, only after joining the school community do they become fully aware that Islamia Primary School like all other state schools has the usual budgetary constraints and furthermore that the teaching of the Qu’ran which is fundamental part of Islamic education has to be funded by the community through fundraising and voluntary donations. Unfortunately the combination of poor facilities and voluntary payment for Qur’an studies has created the ‘perfect storm’ of frustrated and dissatisfied parents, many of whom have created a ‘blame culture’ in direct contravention of the ethos of the school and completely ignored or taken for granted that the academic standards and results have remained high and generally above Brent and National levels.

The school has been on a split site as a temporary measure for what should have been 2 years but has now been over 14 years and lacks basic facilities such as a staff room, library, kitchen and permanent canteen. Facilities such as the gym and prayer hall are shared spaces. The Governing Body and the Yusuf Islam Foundation, with the local authority have worked hard to change the situation of the school and throughout the struggle have remained aspirational but realistically aware for the need to work within our budget. Of course none of the financial constraints are mentioned to parents external to the school or during the admission process just in case they are interpreted incorrectly as a

violation of the Admissions Code but nevertheless these constraints exist and are unspokenly known to Alumni.

Therefore, in order to retain the strength of the school's ethos and for the school community to have a more realistic vision of what can be attained and / or provided, the Admissions Authority introduced criterion d. In line with the Admission Code, at no point did the Admission Authority expect financial support or support in kind from successful Alumni applicants or indeed any applicants."

76. The school's aim is summarised in the first sentence of the final paragraph set out above. There are two elements: retaining the strength of the school's ethos and enabling the community to have a more realistic vision of what can be attained. What these elements have in common is a desire to retain or enhance continuity in the parent body.

77. I sympathise with the school's wish to engender a school community which is supportive and understanding of some of the difficulties it faces, and I am prepared to find that this aim or these aims are legitimate. However, I do not consider that they are strong enough reasons to justify the race-based disadvantage I have identified above to which criterion d gives rise.

78. I do not find that the children of alumni have any particular vulnerability such as that of the children of converts. If anything, the children of people settled in England for longer are more likely to have a more stable social and economic position than those of more recently settled groups. The criterion provides for a maximum of ten per cent of the PAN, six pupils, to be selected. Those 6 pupils will 'displace' six other pupils into a lower criterion who will tend to come from more recently settled racial groups who are more likely to be vulnerable.

79. I find that Criterion d is indirectly discriminatory under section 19 of the EqA2010.

80. I note that the Referrer alleges that the school's motivation for giving priority to the children of alumni is that such parents are more likely to make financial contributions to the school. I do not find that this is the case. I accept the school's assurance on this point.

81. In light of the finding of indirect discrimination, oversubscription Criterion d is unlawful and will need to be removed or revised to become lawful. It is not necessary therefore for me to consider the other issues raised by the Referrer in relation to Criterion d.

## Relative Priority

82. I have considered the relative priority of criterion c to other criteria. (No question of the relative priority afforded by criterion d arises because I have decided that it will need to be removed or revised).

83. Criterion c places Muslim children who meet the convert criterion above Muslim children with siblings in the school (Criterion e). For entry in 2022 all (31) Muslim children with siblings in the school have been offered places, along with 16 other Muslim children. This may change in future but as things stand Muslim children with siblings at the school are not being displaced.

84. I accept that there are good reasons for giving siblings a high priority. It is difficult for parents to manage two or more primary aged children who do not go to the same school. Families move and may live further from a particular school when a sibling reaches an age to apply for a place. But that does not mean it is unlawful for the school to afford greater priority under the convert criterion than under the sibling criterion. There is no clearly “right or wrong” order in that respect. As is stated in paragraph 1.10 of the Code “It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances”. In this case I have found that Muslim children who meet the convert condition are a vulnerable group in the school’s local area worthy of particular priority.

85. Criterion c is also given a higher priority than that given to other Muslim children, with oversubscription in that category decided on distance (Criterion f). Inevitably in an oversubscribed school a group of applicants with a higher priority in the oversubscription criteria will displace others with a lower priority. In many schools this will be children who have no particular priority other than proximity to the school.

86. There still remain a majority of places for Muslim children who do not fall within Criterion c. The school is heavily oversubscribed. There are not enough places in Muslim schools to meet the demand in the local community. With or without Criterion c a significant number of local Muslim children will not gain places at the school every year.

87. It is open to the admission authority to decide to prioritise the parent convert group over other groups, including siblings and other Muslim children. I consider that the priority afforded to children who meet Criterion c is fair and complies with the Code and the law.

## Other matters

### The faith criteria

88. The oversubscription criteria are not clear regarding Muslim children and the religious practice test. The lack of clarity does not comply with the requirements set out in paragraphs 14 and 1.8 of the Code. These provisions do not comply with the requirement under paragraph 14 of the Code, that “Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”.

**89. The priority afforded to looked after previously looked after children.**

Criteria a. seems to afford the first priority to all looked after children, whether Muslim or not and to previously looked after children and “internationally adopted” children who i) are Muslim; and ii) meet the religious practice test. It is not clear that this is the intended meaning, as “any other looked after children” are covered in criterion g.

90. The words “internationally adopted” do not fully reflect the provision in paragraph 1.7 of the Code which defines such children as “those 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”. “In state care” is defined in footnote 15 as “A child is regarded as having been in state care outside of England if they were in the care of or were accommodated by a public authority, a religious organisation, or any other provider of care whose sole or main purpose is to benefit society”. It is possible that a child may be “internationally adopted” without having been in “state care”.

**91. The “religious practice test”.** The supplementary information form (SIF) in Section 1 “Particulars of the Child” seeks relevant information about the child, whether the child is looked after or previously looked after and whether the child has siblings attending the school.

92. The form then poses a series of questions, also in Section 1, which are summarised below, with, in brackets, the criterion the question relates to:

a) Is the parent of the child currently employed at Islamia Primary School?  
(criterion b)

b) Is the parent of the child currently a revert to Islam? (Criterion c);

c) Is the parent of the child an Alumni of Islamia Primary School? (criterion d).

These are not “Particulars of the Child” and this arrangement of questions on the form is not clear contrary to paragraphs 14 and 1.8 of the Code.

93. Section 2 “Particulars of parent/carer” seeks contact information and sets out the question, headed “Question 1 to be completed by parent / carer “, “Do you believe in the oneness of Allah (SWT) and that Muhammad (SAW) is the final messenger of Allah (SWT)”. This appears to be a statement of the parent’s faith. Only criteria b and c refer to the religion of the parent. So, it would appear, this question is only relevant to those criteria.
94. Section 3 is headed “Religious Practice”. After details of the Imam completing this section, the form has a heading “Question 2 to be completed by an Imam” and the statement “I confirm that to my knowledge (or that the parent / carer has directly confirmed to me) that, the child is brought up in accordance with the Muslim Faith”.
95. Only criteria a and f refer to “Muslim children who meet the religious practice test”. Criteria c, d and e refer only to “Muslim children”. Criterion b refers only to children.
96. Paragraph 1 of the SIF states that “Applicants wishing to be considered under the faith-based over-subscription criteria at Islamia Primary School should return this form...and... parents / carers should be aware that if one is not completed and received by Islamia Primary School, the Board of Governors will be unable to apply the faith-based admission criteria to the applicant and the applicant will be regarded as a non-faith applicant”.
97. Paragraph 4 of the SIF states “In order to meet the religious practice test, all questions need to be answered “yes””. This cannot include the questions set out in section 1, which do not relate to religious practice, but presumably refers to “Question 1” in section 2 and “Question 2” in section 3. However, this is not clear.
98. It seems likely that these discrepancies are the result of loose drafting rather than a deliberate attempt to place different conditions on the various criteria. However, the drafting must be clear in order to comply with the requirements of paragraphs 14 and 1.8 of the Code.
99. It appears that the “religious practice test” requires that a) at least one parent signs a profession of Islamic faith; and b) that an Imam can respond “yes” to Question 2, that is that the Imam confirms that “the child is brought up in accordance with the Muslim Faith”. It needs to be made clear whether, for a particular oversubscription criterion, that is the requirement or, if that is not the requirement, what is?

## Determination

100. I have considered the admission arrangements for September 2022 and 2023 for Islamia Primary School, Brent in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters raised in

the referral, the arrangements in part do not conform with the requirements. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

101. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. I do not require the admission authority to revise its admission arrangements for September 2022. The admission authority is required to revise its admission arrangements for September 2023 by 30 November 2022.

Dated: 21 October 2022

Signed:

Schools Adjudicator Tom Brooke



## Annex A

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### Reception 2023/2024 SUPPLEMENTARY INFORMATION FORM

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1. Applicants wishing to be considered under the faith-based over-subscription criteria at Islamia Primary School should return this form to the school on or before **15th January 2023**. (Although completion of the Supplementary Information Form is not mandatory, parents / carers should be aware that if one is not completed and received by Islamia Primary School, the Board of Governors will be unable to apply the faith-based admission criteria to the applicant and the applicant will be regarded as a non-faith applicant.)
2. If this form is received after **15th January 2023** the application will not be considered under the faith-based over-subscription criteria until all in-time applications have been considered.
3. In order to be valid, the form must be signed by a parent / carer and by the Imam. It is the responsibility of a parent / carer to arrange for this to be done and for the form to be returned on time.
4. In order to meet the religious practice test, all questions need to be answered "yes". However, it is important to understand that there is no automatic right to a place for any applicant, even where the child meets all the criteria, where Islamia Primary School is over-subscribed.
5. Please note that the Islamia Primary School reserves the right to change this form and the criteria to be met from year to year, subject to appropriate consultation during the relevant consultation period.
6. With respect to the questions on the Supplementary Information Form, please tick or circle the answer as appropriate.

PLEASE SUBMIT YOUR APPLICATION TO  
ISLAMIA PRIMARY SCHOOL BY THE CLOSING  
DATE: **15<sup>th</sup> January 2023**

Official use only

CAF Y/N	Reversion Cert: Y/N
Staff Y/N	Former pupil proof: Y/N
Sibling Y/N	
Official stamp Y/N	Distance:

## SECTION 1 - PARTICULARS OF CHILD

Surname:					
First Names:					
Date of Birth:					
Male / Female	M		F		
Child's Home Address:					
Post Code:					
Is the child looked after, a previously looked after or internationally adopted previously looked after child to the admissions authority?	Yes / No				

If the child has siblings currently attending **Islamia Primary school (IPS)** or siblings who are due to be attending the school at the date of the proposed admission, please give their details below:

Name: \_\_\_\_\_ Date of Birth \_\_\_\_\_ Year: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth \_\_\_\_\_ Year: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth \_\_\_\_\_ Year: \_\_\_\_\_

Is the parent of the child currently employed at Islamia Primary School: Yes / No

If yes, what date did employment commence? \_\_\_\_\_

Is the parent of the child currently a revert to Islam?:	Yes / No
If yes, date of reversion and certificate provided? _____	

Is the parent of the child an Alumni of Islamia Primary School (post May 1998, Voluntary-aided status) Yes / No
If yes, state start and end years of attendance and evidence provided: _____

## SECTION 2 - PARTICULARS OF PARENT / CARER

Name of Parent / Carer:*	
Full Address:	
Contact Number:	
Email Address:	

**\* Applicants need not give the name of both parents/carers**

**Question 1 to be completed by parent / carer**

Question 1: Do you believe in the oneness of Allah (SWT) and that Muhammad (SAW) is the final messenger of Allah (SWT)	Yes / No
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## SECTION 3 - RELIGIOUS PRACTICE

This section is to be completed by the Imam\* in the presence of the parent / carer of the child.

Name of Imam:	
Job title of Imam:	
Contact Number of Imam:	

Name of Mosque or Religious Centre:	
Address of Mosque or Religious Centre:	
Contact Number of Mosque or Religious Centre:	
Name of Child Referred to in Section 1:	
Date:	

- \* Only official Imams employed or appointed by the Mosque or religious centre as an Imam are authorised to sign this form. Signatures of Madrassah teachers and unofficial Imams will not be accepted.
- \* *Mosque or Religious centre* for the purposes of this form, is defined by a place where regular Friday (Jumu'ah) prayers take place.

**Question 2 to be completed by an Imam**

Question 2: I confirm that to my knowledge (or that the parent / carer has directly confirmed to me) that, the child is brought up in accordance with the Muslim Faith.	Yes / No
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**Declaration:**

I confirm that the information given in this form is true and accurate:

Signature of Imam:	
Date:	
Stamp of the Mosque or religious centre:	

***“You are the best nation produced [as an example] for mankind. You enjoin what is right and forbid what is wrong and believe in Allah.” (Surah Al-Imran, Ayah: 110)***

I confirm that all the information given in this form is true and accurate.

Name of Parent / Carer:

Signature of Parent / Carer:

Date:

### Supplementary Information Form Check list

Please **check** and tick all completed sections before submission:

**Submitted Common Application Form to Local Authority**

<https://www.eadmissions.org.uk/eAdmissions/app>

**Section 1: Particulars of child**

**Section 2: Particulars of Parent**

**Section 3: Religious Practice**

**Official stamp from Imam's mosque/ religious centre**

**Declaration**

Note:

(SWT) - Subhana Wa Ta'ala

(PBUH) - Peace Be Upon Him