



Office of
the Schools
Adjudicator

Determination

Case reference:	REF3904 (for 2023) and REF4089 (for 2022)
Referrer:	A member of the public
Admission authority:	The Governing Board of Yesodey Hatorah Senior Girls School, Hackney, London
Date of decision:	05 January 2023

Determination

I have considered the admission arrangements for September 2022 and September 2023 for Yesodey Hatorah Senior Girls School, Hackney, London in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the determined PANs, the arrangements do not conform with the requirements. I have also found that there is another matter which does not conform with the requirements relating to admission arrangements in the way 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 for both 2022 and 2023 within two months of the date of the determination, unless a different date is specified by the adjudicator. In respect of the PANs which are part of both sets of arrangements, I determine that this date shall be 20 January 2023.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the Office of Schools Adjudicator (OSA) by a member of the public (the referrer), about the admission arrangements (the arrangements) for Yesodey Hatorah Senior Girls' School, Hackney (the school), for September 2023. The date of the objection was 17 March 2022.

2. The referral relates to the published admission number (the PAN) for the normal year of admission.

Jurisdiction

3. The arrangements for September 2023 were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school on 28 February 2022, and on the same date revised admission arrangements for September 2022 were also determined by it. When both sets of arrangements were brought to my attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements. I therefore decided to use my power under section 88I(5) of the Act to consider them both as a whole.

4. I am considering the arrangements for September 2022 under REF4089 and those for 2023 under REF3904.

5. The referrer has asked to have their identity kept from the other parties and this request has been agreed by the Chief Adjudicator. The referrer has accepted my offer that they be a party to both cases.

Procedure

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

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

- a) the referrer's form of objection dated 17 March 2022, and subsequent correspondence;
- b) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
- c) a copy of the determined arrangements for September 2022 and September 2023;
- d) comments from the governing board on the matters raised, supporting documents and subsequent correspondence;
- e) comments from the local authority on the matters raised, supporting documents and subsequent correspondence; and
- f) comments from the school's faith body on the matters raised.

8. The parties to these cases are the school's governing board, the local authority (Hackney London Borough Council, the LA), the religious authority (the Rabbinate of the

Union of Orthodox Hebrew Congregations (the UOHC), which is the school's faith body, and the referrer.

The Referral

9. In a form setting out concerns about the arrangements, the referrer cited a recent determination of the adjudicator concerning the school's arrangements for September 2022, ADA3781 dated 10 January 2022. The referrer said that the adjudicator in that case had ruled that a Year 7 PAN as part of the arrangements for 2022 would fail to be reasonable by virtue of being too low, were this to be set at 65 by the admission authority. That is not an accurate description of what the adjudicator said in that case, as I shall explain below.

10. The referrer said that the PAN of 70 which has been determined as part of the arrangements for 2023 is unreasonable because it is too low, and therefore in breach of paragraph 1.8 of the Code which requires that oversubscription criteria are reasonable. The referrer justified this view based on the arguments which had been set out in ADA3781 about the appropriate PAN for Year 7 for September 2022, saying that these remained relevant to the arrangements for 2023. The referrer also stated what was believed to be the school's rationale for wishing to restrict admissions at Year 7, and this was expanded on and referred to by both the referrer and the school in subsequent correspondence.

Other Matters

11. As a result of the referral, the arrangements for both September 2022 and for September 2023 were brought to my attention. When I saw these, I considered that in addition to the matter set out above, the following did not, or might not, conform with the requirements for admission arrangements concerning both sets of arrangements:

- that a note which is for the guidance of Rabbinate signatories on the school's supplementary information form (SIF) refers to two matters as public practice (and concerning which affirmation of religious observance may therefore be withheld). Since both relate to observance which does not take place in public, this renders the associated oversubscription arrangements unreasonable, in breach of paragraph 1.8 of the Code, and makes the arrangements as a whole unclear, in breach of paragraph 14 of the Code.

Background

12. The school is a former independent school established by the Orthodox Jewish Charedi community in Hackney, London which has been voluntary aided since 2005. Although providing for girls aged 11 to 16 for most of its existence, between September 2019 and September 2021 it also offered places to girls in Years 5 and 6. The adjudicator in VAR2118 (dated 30 November 2021) agreed to a request from the school that the arrangements for 2022 which, as originally determined, also provided places to girls in these primary years, be varied by their removal.

13. The arrangements for 2022 had been originally determined on 27 January 2021 and in this form they were the subject of an objection which was considered in ADA3781. In it, the adjudicator found that the arrangements did not comply with the requirements concerning admission arrangements in a number of respects, and also referred to the matter of the PAN which would need to be set for Year 7 for admissions in September 2022, since this had become the normal year of admission to the school as a result of the offer of places in Years 5 and 6 having been removed. The adjudicator said:

“In view of the facts which I have set out above, when the school makes changes in order to comply with this determination, a PAN of 65 for Year 7, which is the current PAN for Year 5, would fail to be reasonable in my view, by virtue of being too low.”

14. The facts which the adjudicator had taken into account in the above statement were the available net capacity assessment (NCA) of the school buildings, the LA's projection of the need for Year 7 places locally, and the level of applications for places in Year 7 at the school which there had been in the three previous years.

15. When the school provided me with evidence of the determination of the arrangements for 2023 following the objection to them, this showed that these arrangements, and revised arrangements for 2022, had been determined together on 28 February 2022. In response to my communication to the parties setting out my jurisdiction regarding the objection which had been raised about the arrangements for 2023 and my concern regarding the matter set out above, the school's legal advisers wrote questioning the jurisdiction which I had claimed.

16. It was their view, first, that since the PAN (for Year 5) in 2022 was 65 and that the PAN set for Year 7 in the 2022 arrangements (when revised by the school) was 70, there had been an increase in the PAN. Paragraph 3.3 b) of the Code says that “objections about own authority admission's decision to increase or keep the same PAN” cannot be brought, and therefore it was the view of the school's legal advisers that the adjudicator had no jurisdiction to consider the objection. Second, since the adjudicator had expressed the view referred to above about the reasonableness of the Year 7 PAN in ADA3781, the objection raised the same or substantially the same matter that had been decided upon in the last two years, they said, and was therefore an objection which paragraph 3.3 e) of the Code said could not be brought. Paragraph 3.3e) says:

“The following types of objection cannot be brought:

e) objections to arrangements which raise the same or substantially the same matters as the adjudicator has decided on for that school in the last 2 years. “

17. I replied, saying that since the school did not have a Year 7 PAN at the date of the determination in ADA3781, it could not be said that the adjudicator had made a decision about it in that determination. I also said that the adjudicator has a separate jurisdiction under section 88I of the Act to consider admission arrangements for a school that have come to his attention, and that I now proposed to consider both the arrangements for 2022

and those for 2023 in respect of the Year 7 PANs which had been set by the school. In a further communication, the parties were informed that I had decided to no longer consider the objection to the 2023 arrangements under section 88H of the Act, and that the arrangements for 2023 would now be considered as REF3904. I asked to be provided with a copy of the arrangements for 2022 as determined by the trust on 28 February 2022.

18. Having first sent me a copy of the 2022 arrangements as determined in January 2021, the school corrected this and sent those which had been determined on 28 February 2022. These are identical to those which I had seen previously for admissions in 2023, other than in the dates included in them, and when I then provided the parties with a paper concerning my consideration of the arrangements for 2022, giving the reference number of REF4089 assigned to it, I said that the matters which I would consider were those as set out previously concerning my consideration of the 2023 arrangements. These are whether the PAN for Year 7 is too low, and whether the reference to matters of private observance in the SIF is in breach of paragraphs 1.8 and 14 of the Code.

19. The arrangements for both 2022 (as revised) and 2023 contain the following:

- (i) The PAN for Year 7 is 70
- (ii) Girls whose Education, Health and Care Plan names the school will be admitted
- (iii) If there are more applications than places, the following oversubscription criteria are used in the order shown:
 - a. Jewish looked after or previously looked after girls (as defined)
 - b. Charedi (as defined) Jewish girls with a sister (as defined) at the school at the time of application
 - c. Other Charedi Jewish girls
 - d. Other looked after or previously looked after girls
 - e. Other girls
- (iv) The SIF contains the following under the heading “Note to Rabbinate signatory” in reference to the countersignature requested as affirmation of the parents’ declaration of adherence to the guidelines for Charedi practice set out there:

“Please sign this document unless you have evidence, in relation to the public practice (Sheitels, clothing, Torah learning and online social presence) that the family does not meet these requirements.”

Consideration of Case

20. In what follows, I shall consider the two matters described above, which appear in identical form in the arrangements for both years, indicating if any information or the comments of parties to the cases refer to one year in particular. I shall set out my view concerning each set of arrangements.

The Year 7 PAN

21. The school's legal advisers conveyed to me its response to the objection concerning the 2023 arrangements but asked that it be not circulated until I had replied concerning the question of jurisdiction, and I was happy to agree to this. It was then circulated to the parties in accordance with standard OSA practice.

22. There has been a copious exchange of views concerning the PAN involving the referrer and the school, which I shall summarise together with my view about the arguments which have been put forward which I consider of relevance to my consideration of the matter before me. Much of the correspondence has been about matters which have been introduced by one or the other of the parties and which have then been the subject of further comment, but which I do not consider material to my consideration. I shall therefore refer to them only in passing below.

23. The form of objection set out the following points in support of the referrer's contention that the PAN was unreasonably low: that

- (i) a net capacity calculation referred to in ADA3781, carried out in 2016 and current when the determination was written, gave a net capacity of 526 and a permitted PAN of 105;
- (ii) the removal the 130 places offered in Years 5 and 6 means that there is "substantial extra capacity";
- (iii) first place preferences for Year 7 for 2020 and 2021 quoted in ADA3781 show oversubscription and that some first choice preferences are not met;
- (iv) when the school consulted in 2017 on adding places in Years 5 and 6, it issued a consultation paper (a copy of which was supplied by the referrer) which said that when the school was built and received voluntary aided status in 2005 "the PAN was set at 450. The present PAN is 400 with an expected 80 students per year group. The governors' admissions policy agrees with this PAN namely of 80 students per year". The consultation paper also said that "our current building is suitable for use by 450 students." In this, I take the reference to PAN actually to be to the school's whole capacity; a capacity of 400 in an 11 – 16 school would be expected to sustain a PAN of 80, and
- (v) the private seminary operating on the school premises "must naturally put pressure on the school's capacity."

24. The school set out in its response, which was made prior to my decision to consider both the arrangements for 2022 and for 2023, a number of arguments in support of its view that the PAN of 70 for Year 7 admissions in 2023 is not unreasonable. First, it asked me to consider that since a PAN is not an oversubscription criterion, paragraph 1.8 of the Code does not apply to it. On the face of it, this may indeed be true: the oversubscription criteria are concerned with how places are allocated when a school is oversubscribed and not with how many places there are to start with. This is not the whole story, however.

A school must have a PAN (paragraph 1.2 of the Code) and also must have oversubscription criteria (paragraph 1.6 of the Code). It is also beyond doubt that the PAN is part of the admission arrangements, as provided for in section 88D of the Act and in paragraph 1.2 of the Code, and can be considered by the adjudicator in accordance with section 88I of the Act. Thus, even if the PAN is not properly to be considered to be part of the oversubscription criteria, it is certainly part of the admission arrangements. Paragraph 14 of the Code concerns admission arrangements as a whole and requires that they be fair (as well as clear and objective). The referrer made this point in response to what the school had said about the relevance of paragraph 1.8 of the Code to the PAN, saying that the PAN was not fair. The school has considered and responded to this question in further correspondence, as I shall describe below. For the avoidance of doubt, the referrer originally put it to me that the PAN was unreasonable, citing paragraph 1.8, but it is my view that if that were the case then the arrangements as a whole could be unfair in breach of paragraph 14. That is how I shall consider this matter.

25. The school's initial response also referred to paragraph 1.3 of the Code which says that "There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator **must** have regard when considering any such objection." It said that because the PAN had increased from 65 to 70, it "does not therefore contravene any part of the Code nor does it fall foul of the Adjudicator's rationale in ADA3781 where he states that a PAN of 65 would fail to be reasonable by virtue of being too low."

26. The extract from paragraph 1.3 of the Code cited by the school has the context of the previous sentence, which is about objections which community and voluntary controlled schools have the right to make if the PAN set for them (by their LA, which is the admission authority for such schools) is lower than they would wish. The quoted sentence therefore has no bearing here (as I am not considering any such objection) other than that it contains the reminder that there is a very general presumption in favour of increases in PANs. It certainly does not justify the statement that the PAN does not fall foul of any other provision of the Code simply because (as the school has asked me to accept) it has been the result of an increase. As I have said above, there was no immediately prior Year 7 PAN with which to compare it, and the Year 7 PAN the last time there was one for the school was 80. Whether a PAN is reasonable or fair, for instance, depends on the particular circumstances of the particular school, and that is how I shall consider this question. Finally, while a PAN of 70 does indeed not fall foul literally of the quoted view expressed in

ADA3781, that also has no bearing here because I am considering whether the PAN which has been set is reasonable and fair, which is a different question.

27. I shall now consider what I regard as the substantive issues to which I must have regard – namely, the school’s capacity and the demand for places there.

28. In connection with the referrer’s view about the capacity of the school and to previous net capacity calculations, including statements which had been made in 2017 by itself, the school said that “The school’s view is that the capacity assessment is significantly in excess of the actual practical capacity of the school.” It went on to say that “The majority of the school’s non-specialist classrooms can only fit up to 24, rather than 30”, that “some subject specific rooms such as the ITC suite and science rooms are designed for 24 work spaces”, that “the communal areas [used for communal prayer and assemblies] are at practical capacity”, that “the communal dining area is also currently at maximum capacity”, and that two rooms in what it says is a separate building included in a net capacity calculation carried out in 2016 are now used for an independent seminary and should be excluded from the calculation.

29. In response, the referrer provided the additional information that, having opened in 2005, the school erected a two-storey building and that this additional building accounts for the difference between “the original PAN of 90”, and the figure of 105 from the 2016 net capacity calculation. The referrer disputed the school’s assertions as to the size of some classrooms (attaching a copy of the 2016 net capacity assessment), and as to the capacity of the communal areas, and also provided me with a copy of an email dated June 22 2022 from a person said to be a specialist in assessing school capacity which says that his firm did work for the school in 2015 and also said that (for example) “It is clear the school is running at way under capacity.”

30. The referrer also provided me with an aerial photograph of the school campus with “the seminary building” indicated. As far as I can see, this appears to be “another wing of the school campus and adjacent to the main school building”, as the referrer says and not a separate building (as the school says). The referrer then made the point that if there had to be a choice between publicly-funded 11 to 16 provision and “a fee-paying independent Sixth Form, then that space should be reserved for the School.” In other words, the rooms being used should not be discounted from the school’s net capacity assessment in the referrer’s view. Even if they were, since the school was constructed for a capacity of 450 (which would permit a PAN of 90) and the rooms were added at a later date “the school still has a net capacity permitting a PAN considerably more than 70”, according to the referrer. The LA responded to the school’s comments by providing me with just such a calculation, which was a revised NCA which excluded the two rooms in question and gave an indicated admission number of 90. The LA said in this same correspondence that “Visits over the year show that general teaching spaces are not full. Several non-specialist classrooms, for example, had 22 pupils, with space for further pupils without requiring timetable or curriculum change; or additional furniture.”

31. In further correspondence, the school referred to the matter of my consideration being “whether our PAN can be considered fair and reasonable”. It told me that the governors “have spent much time trying to identify the source of the apparent vast incongruence between the capacity as presented in the Net Capacity Assessment (NCA) and the lower observable actual use.” It then referred me to DfE Building Bulletin 103 dated June 2014 and reference there to the appropriate capacity assessment where classrooms “are either less than 7m deep, are not a simple rectangle, or where an assistant will be present.” It said that “at our school, the majority of the classrooms are less than 7m deep, are not simple rectangles, and we employ classroom assistants across the school.” It said that if the capacities calculated under what it says is the relevant scale given in Building Bulletin 103 are used for these spaces, and if spaces such as the library and the hall (which it says “do not allow for constructive learning”) are discounted “it results in a capacity in line with the figures we have proposed.” The school said that it acknowledged that these factors are not included in the current NCA, but asked me to consider them in making my decision as to whether “the school’s PAN can be determined as categorically unfair or unreasonable.” It also referred to budgetary difficulties and the workload of staff. It disputed points made by the referrer about the primary schools which were said to be unfairly favoured as a result of the restriction on the number of places at the school, and in spite of being urged to do so by the referrer I have not pursued this matter as I do not see it having direct relevance to my consideration of the matter in hand.

32. Although the LA was provided with a copy of this correspondence, it has made no comment on what the school has said about what it considers to be the correct means for assessing the school’s net capacity. It was the referrer, who, on seeing what the school had to say about Building Bulletin 103, challenged the school’s reference to it, quoting from its contents. Although the school made a further response, citing part of the Bulletin to support its view, my own reading of the section of the Bulletin to which I have been referred by both parties is that it needs to be read as a whole, and that its intention is to describe the flexibility which exists in the assessment of the capacity of existing school premises, and the circumstances which may permit different assessments to be made. Read in this way, the wording does not in my view support the school’s specific interpretation, which has been to “set a classroom capacity that is in line with this guidance” (or, rather, the school’s interpretation of it). It is more likely in my view that only a much less general reduction in the number of pupil places which can be assigned to areas of the type to which the school has referred might be relevant, and I cannot believe that the LA would not have been cognisant of the content of Building Bulletin 103 when carrying out the net capacity assessments that it has.

33. Finally, the referrer asked me to accept that “Nothing in the school’s response addresses the most basic point that the school was built less than 20 years ago with a stated PAN of 90. An additional building was later added permitting a PAN of 105 as set out in the 2016 Net Capacity Assessment.” The LA’s concluding comment at an earlier point in these exchanges was that it believed that the “school is working to find an acceptable balance between preserving its religious culture and ethos whilst maximising use of the space available”. However it had also said in the same communication that “As a voluntary

aided school, it is the responsibility of the governors and senior leaders to ensure the available space is employed efficiently and to maximum benefit for the rapidly growing community they serve.” and that “The local authority’s position is a strong preference for a PAN of 80”. I am also mindful of the school’s strongly-worded statement that:

“We are being pragmatic about our approach to increasing capacity....Setting an increased PAN would, in our judgement, leave the school very vulnerable and at risk, and would represent a dereliction of our duties as governors.”

34. I shall return to the these matters below, but I turn now to the issue of the demand for places at the school.

35. The school responded to what the referrer had said about the unreasonably low PAN resulting in applicants who had expressed a first preference for a place at the school failing to secure a place by saying that “Unfortunately, this is the nature of school admissions.” The fact that it is common for schools to be oversubscribed does not speak in any way, of course, to the reasonableness and/or fairness of an individual school’s PAN. It has been an expectation for some time that popular schools should be encouraged to expand, and (as I have mentioned above) the Code at paragraph 1.3 states that if a school for which the local authority is the admission authority appeals against its PAN on the grounds that it is too low, then the adjudicator must have regard to the “strong presumption in favour of an increase” when considering any such objection. The LA has provided me with data which shows that in each year since 2018, which was the last year prior to 2022 for which Year 7 was the normal year of entry, there were more first choice preferences expressed for a place than offers made.

	2019	2020	2021	2022
“PAN”	65	65	65	70
Number of first preferences	71	88	80	76
Number of offers made	65	81	72	70

Two points made by the adjudicator in ADA3781 are relevant here. First, since Year 7 was not the normal year of admission to the school for the first three of these years (because of the offer of places in Years 5 and 6 in those years), there was no PAN for Year 7, and so admissions should have been governed in those years by whether the admission of additional pupils would prejudice the provision of efficient education or the efficient use of resources (paragraph 71 of ADA3781). Second, for the years 2019 – 2021 inclusive, data presented at paragraph 50 of that determination showed that in all probability the school was oversubscribed with Charedi girls. The school has told me that for admissions in 2022, there was one girl admitted under the oversubscription criterion for “other girls”, although it has not made further reference to this.

36. When it commented on the objection, the LA told me that “Demand for places at the school is forecast to rise. The Jewish community in Stamford Hill, which the school serves, is predicted to grow significantly in coming years. The largest religious group within the LSOA [lower-layer super output area] boundary is the Jewish community...whose population has increased by nearly 125% since 2001.” The LA has however not quantified these observations in terms of an actual forecast of demand, and the school has not commented on them directly, saying only that “there is another Charedi senior girls’ state school in the area and there is sufficient capacity between the two schools to meet local demand.” It also pointed out that applications for places at the school have fallen in each of the three most recent years and said that if the PAN is increased to 80, as suggested by the LA, the school would be “undersubscribed”. “This would have adverse consequences for the school in particular a potential erosion of its strong religious culture and ethos.” The school describes itself as “a Charedi Jewish faith school”, and I imagine therefore that the reference to undersubscription means for the school “undersubscribed with Charedi girls”, and not necessarily undersubscribed as a whole, given the figures above. As the adjudicator in ADA3781 made clear, the school’s religious character as designated by the Secretary of State is Jewish, and of course any school with a religious character must admit every child who applies, without regard to matters of faith, if there are places available, as set out in paragraph 1.36 of the Code. That is to say, schools with a religious character may give priority to children on the grounds of faith but they nevertheless serve the whole community, not just part of it and they cannot turn away children who would like to attend if they have space for them even if those children are of a different denomination of the faith, another faith or no faith. Although the LA has expressed its view about the likely future demand for places at the school in terms of the local Jewish population, the school’s reference to the existence of another Charedi school is not material to my considerations, since I am concerned with the reasonableness (and the fairness) of its own PAN in the light of its capacity and the overall demands for places there.

37. The determined PAN is part of the admission arrangements for a school by virtue of section 88D of the Act. A PAN set low by reference to the capacity of a school could well operate to cause unfairness if it frustrated the opportunity for children to attend the school of their parents’ choice and the school had the capacity to accommodate those children and/or where it might prejudice the ability of the local authority for the area to meet its duty to secure the provision of school places. The school has responded to me concerning the issue of the fairness, as well as that of reasonableness of the PAN, saying “Fair and reasonable are terms that must take into consideration local circumstances and all stakeholders involved.” I concur with this view and accept that these considerations “include” (as the school has said) the factors affecting itself which I have referred to above. But these are not all the circumstances, or all the stakeholders. As I have said, my concern is the relationship between the local demand for places at the school and its capacity.

38. The evidence with which I have been presented on these two matters can be summarised as follows. As far as the physical capacity of the school is concerned, I am in no doubt that there is room for more girls to be admitted than will be the case if the Year 7 PAN remains at 70. I do not discount what the school has said to me about some matters

relating to the use of its premises which are related to its particular ethos, but at the same time I take the view that the purpose of a there being a standardised methodology for deciding on the number of children which a school building can accommodate is that all schools are treated equally and fairly.

The school is by no means unique in wishing its accommodation were different, or in having budgetary difficulties or staff who feel that they are working under pressure. I certainly do not accept the school's suggestion that some spaces such as the library should reasonably be discounted from its capacity calculation because it finds them less than ideal in practice, and I am mindful that it has said that such modifications are needed if its own view of the capacity of its buildings is to be supported. The school's current NCA as provided by the LA, in which rooms occupied by the seminary run by the school have been discounted, still shows an indicated PAN of 90. I have said above what my view is concerning the school's references to the technical aspects of how that calculation should be carried out, and I am not persuaded that the LA's assessment is invalidated by the school's objections about the methodology of the calculation.

39. There is no doubt in my mind, either, that there is an ongoing level of demand from parents for places at the school which is unsatisfied by a PAN of 70, and that this is in all probability going to continue at its present level, at least. The school has in the past admitted what it has referred to as "bulge years" (that is, years in which, as it has been described to me, it admits above the level of the PAN) and has indicated its willingness to do so again. However, for the LA to fulfil its legal duty to secure sufficient school places, it needs certainty that the PANs which are determined for the schools in its area are such that it will be able to do so.

There is capacity at the school, and there is demand for places there which the school currently does not satisfy. My view is that the PAN of 70, as determined for admissions to Year 7 at the school, for both September 2022 and September 2023, is not reasonable (as the referrer put it to me) because it is too low in the light of these factors and this means that the admission arrangements as a whole are not fair contrary to paragraph 14 of the Code. It is also my view, in the light of the considerations which I have set out above, that this would be the case were the PAN to be lower than 80, which is the figure the LA would wish to see.

Affirmation of Charedi practice

40. I referred above to the matters contained within the school's arrangements for 2022, as originally determined, which were found in ADA3781 not to comply with the requirements concerning them. As I have also said, the arrangements were revised by the governing board following the adjudicator's determination, and it is clear to me that a concerted attempt was made at that point to provide the school with compliant arrangements, for which the governors are to be congratulated.

41. In ADA3781, the adjudicator found that the arrangements as originally determined were not reasonable as a result of the requirement contained within them for a

rabbi to certify the observance of practices which are relevant to the establishment of Charedi status on the part of applicants, but which are conducted in private. The arguments concerning this judgement are to be found principally in paragraphs 32 to 34 of ADA3781, and I shall not repeat them here. In essence, it was the view of the adjudicator that only matters of religious observance which take place in public should be subject to rabbinical verification if the arrangements are to be reasonable, and that the arrangements should also state which these practices are (and which they are not) if the arrangements are to be clear.

42. The school stated during the exchanges which took place in ADA3781 that it was willing to include wording in its revised SIF to the effect that a countersignature from a rabbi would only be required for public elements of observance, and the SIF which is part of the revised arrangements for 2022 and of the arrangements for 2023 says “The Rabbinate is asked to countersign, in the absence of contrary evidence, in relation to the elements of public religious observance”, which are then set out as being the four matters “Sheitels, clothing, Torah Learning and on line social presence”, as stated above.

43. The school accepted my concern that Torah Learning “may, in some circumstances, not be a matter of public practice”, but took the view that online social presence was “public”, although it stated its willingness to accept the view of the adjudicator concerning this also.

44. ADA3781 (at paragraphs 18 to 21) set out the importance of written guidance from the body or person representing a school’s religious authority providing a statement of the religious activities which it may then take into account when prioritising applications for places on the grounds of religion or belief. The school’s religious authority is the UOHC, and it confirmed to me as part of these present cases that its guidance to the school remained that which had been provided to the adjudicator in relation to ADA3781. That guidance includes the statement that:

“Home entertainment is strictly not allowed. “Home entertainment” means any entertainment accessed online via any computerised device. This includes online gaming or any online presence which involves personal social use (e.g. social forums and social media).”

The same wording is included, almost verbatim, in the SIF which is part of the school’s admission arrangements for both 2022 and of those for 2023. It is worth noting in passing that the arrangements also provide readers with a copy of the document “Elul 5772”, which forms part of the UOHC guidance to the school. This elaborates on the issue of internet access in Charedi households, and I see this as evidence that the school wishes to ensure that the practices which it takes into account do indeed accurately reflect the guidance which it has received.

45. The descriptions of online social presence in the UOHC guidance and in the SIF use plain language. Words such as “home” and “personal” are used, which I do not see as compatible with a requirement that another person can provide confirmation as to what has

taken place (or not taken place), as if it were occurring in the public domain. It seems to me that both Torah Learning and “online social presence” are matters which occur (or do not) in private. I am grateful for the school’s willingness to defer to the adjudicator’s view concerning both, but as determined the arrangements for both 2022 and 2023 refer to both as matters of public observance. This renders the associated oversubscription arrangements unreasonable, in breach of paragraph 1.8 of the Code, and makes the arrangements as a whole unclear, in breach of paragraph 14 of the Code.

Summary of Findings

46. Based on my understanding of the capacity of the school’s buildings, and of the present and likely future demand for places there, I have come to the view concerning the school’s arrangements for 2022, and those for 2023, that the PANs of 70 are unreasonable by virtue of being too low and therefore the arrangements as a whole are unfair. The admission arrangements for 2022, including the PAN for Year 7, remain relevant to admissions to the school during the current school year, and while the deadline for applications for places at the school from September 2023 was 31 October 2022, it is important now that a revised PAN for those admissions also be published by the school as soon as possible, and well before the national offer date of 1 March 2023.

47. The arrangements contain oversubscription criteria which give priority to girls whose family can claim Charedi status, as set out there in line with guidance from the school’s religious authority. I have also decided that two matters of religious observance included in the arrangements which are described there as matters of public religious observance are not such, but are private in nature and therefore not capable of being certified by a rabbi. Since the arrangements require such certification in relation to these two matters, the associated oversubscription criteria are not reasonable in nature in breach of paragraph 1.8 of the Code, and the arrangements as a whole are unclear in breach of paragraph 14 of the Code.

Determination

48. I have considered the admission arrangements for September 2022 and September 2023 for Yesodey Hatorah Senior Girls School, Hackney, London in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the determined PANs, the arrangements do not conform with the requirements. I have also found that there is another matter which does not conform with the requirements relating to admission arrangements in the way set out in this determination.

49. 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 for both 2022 and 2023 within two months of the date of the determination, unless a different date is specified by the adjudicator. In respect of the PANs which are part of both sets of arrangements, I determine that this date shall be 20 January 2023.

Dated: 05 January 2023

Signed:

Bryan Slater, Schools Adjudicator