Office of the Schools Adjudicator

Determination

Case reference:	**ADA4194 (Yesoiday Hatorah Girls' Academy)** **ADA4195 (Yesoiday Hatorah Boys' Academy)**
Objector:	**A member of the public**
Admission authority:	**Yesoiday Hatorah Multi Academy Trust for Yesoiday Hatorah Girls' Academy and Yesoiday Hatorah Boys' Academy, Manchester**
Date of decision:	**5 December 2023**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements determined by Yesoiday Hatorah Multi Academy Trust for Yesoiday Hatorah Girls' Academy and Yesoiday Hatorah Boys' Academy, Manchester.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 15 January 2024.

The Referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), objections have been referred to the adjudicator by a member of the public (the objector), about the admission arrangements (the arrangements) for Yesoiday Hatorah Girls' Academy and Yesoiday Hatorah Boys' Academy (the schools), primary schools for girls and boys respectively between the ages of 4 and 11, for September 2024. Both schools have a

designated religious character of Jewish. The objections are that the oversubscription criteria which give priority to children from Charedi Jewish families fail to comply with the requirements in the School Admissions Code (the Code) concerning them in a number of ways, and that they make reference to matters which are not concerned with religious practice.

2. The local authority (LA) for the area in which the school is located is Bury Metropolitan Borough Council. The LA is a party to these objections. Other parties to the objections are the Yesoiday Hatorah Multi Academy Trust (the trust), the objector and the schools' religious authority, The Machzikei Hadass Communities, Manchester (the faith body).

Jurisdiction

3. The terms of the Academy agreement between the trust and the Secretary of State for Education require that the admissions policies and arrangements for the academy schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust, which is the admission authority for the schools, on that basis.

4. The objector submitted their objections to the determined arrangements for both schools on 14 May 2023. The objector has asked to have their identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their name and address to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

a. a copy of the minutes of the meeting of the trust board at which the arrangements were determined;

b. a copy of the determined arrangements for both schools, which include the Supplementary Information Forms (the SIFs);

c. the objector's forms of objection dated 14 May 2023 and supporting documents;

d. the trust's response to the objections, which was submitted via Stone King LLP acting on its behalf;

e. the guidance of the faith body to the trust concerning religious activities for the purposes of school admission arrangements, also submitted via its legal representatives, and

f. copies of the determinations made by the adjudicator in:

ADA3362 The Avigdor Hirsch Torah Temimah Primary School

ADA3380 Pardes House Primary School

ADA3505 Menorah High School for Girls

ADA3530 Pardes House Primary School

ADA3718 Menorah Primary School

ADA3780 Menorah High School for Girls

ADA3809 Lubavitch Ruth Lunzer Primary School.

These are determinations in which I was the adjudicator myself or which have been brought to my attention by the Chief Adjudicator.

The Objections

7. The objector made the following complaints concerning the admission arrangements for the schools, set out in identical fashion in separate forms of objection:

(i) That the oversubscription criteria in the arrangements which give priority to children from Charedi families fail to comply with the requirements set out in paragraph 1.8 of the Code concerning them in the following ways:

a. because they set out dress code requirements for mothers (of children for whom a place is sought), which the objector said amounts to "an obsession with women's modesty rules", and which are not necessarily "based on Jewish law", the objector said that the arrangements fail to meet the requirement that they comply with equalities legislation. The objector said that it is harder for women to comply with the dress requirements which are set out in the arrangements than it is for men and although this was not stated explicitly, I understand the objection to be that making more requirements of mothers in this regard amounts to discrimination concerning the admission of children to the school on the grounds of sex, which the objector says is prohibited under the Equality Act 2010;

b. because the supplementary information form (SIF) requires "full adherence with the Shulchan Aruch" on the part of Charedi families, and because this "is a highly complex work", this amounts to an unreasonable requirement. The objector also said that "most parents, especially mothers, will not have studied all sections in sufficient detail to confirm that they comply". The objector did not say so, but I understand this to be an objection that it is not easy for parents to understand how the faith-based criteria in the

arrangements can be reasonably satisfied, which is a requirement of paragraph 1.37 of the Code;

c. because the SIF requires two Rabbis to affirm "that the family lives in compliance with the Shulchan Aruch and the Mehalech Hachaim", and because "no Rabbi would be aware if someone was, or was not, fully compliant", this requirement is not "verifiable". The objector elaborated this point at some length and I understand this to be an objection that the arrangements are not reasonable or objective, as set out later in the objections, which are requirements of paragraph 1.8 of the Code; and

d. because "the questions on the SIF" use phrases such as "eye-catching" and "refined", the arrangements fail to comply with the requirement that oversubscription criteria must be clear. The objector lists the following as further unclear terms:

Faded, out of norm, conservative, tight fitting, unacceptable (entertainment, films), dark (nail polish).

These are all taken from or form part of the dress code for mothers attached to the SIF and concerning which it seeks certification, and I understand these to be the subject of the objections.

(ii) That the oversubscription criteria use requirements which are not matters of religious practice but "rather more recent cultural practise [sic]" (the objector referred to the prohibition on sports insignia and the like and the wearing of hats by men to prayers), and that religious schools are only allowed to "limit access based on religious practise [sic]" as set out in paragraph 1.9i of the Code. I include here the objector's statement, concerning matters set out in the Mehalech Hachaim Code, that: "This concern about understanding the outside world is in direct contradiction of the British values curriculum and the requirement for children to be ready for adult life in modern Britain." I understand these references to be an objection that the arrangements fail to comply with paragraph 1.9i of the Code. I note here that my jurisdiction is only for the admission arrangements; I have no jurisdiction in relation to the schools' curriculum and teaching.

Other Matters

8. When I looked at the arrangements it appeared to me that the following matters also do not, or may not, conform with the requirements concerning admission arrangements in the Code:

(i) the statement that "The academy will meet its statutory obligation to admit any child whom the academy has to admit by law, provided the academy has been adequately consulted" (paragraph 1.6);

(ii) the priority given to Charedi looked after and previously looked after children

as opposed to all Jewish looked after and previously looked after children (paragraph 1.37);

(iii) the inclusion of a statement describing what happens if oversubscription takes place within an oversubscription criterion (that is to say if, as will often be the case, the PAN is reached and exceeded among children who fall within the same oversubscription category) as an oversubscription criterion itself (paragraphs 1.6 and 1.8);

(iv) the definition of looked after and previously looked after children (paragraph 1.7);

(v) the statement concerning in-year admissions that "most year groups are full……so few in-year applications can be considered, or places offered" (paragraph 2.28);

(vi) the requirement that a child's birth certificate accompany a completed SIF (paragraph 2.5), and

(vii) the use of the terms "Shul", "daven", "Rov", "Rebbetzen" and the use of Hebrew script (paragraphs 14 and 1.37).

9. I have accordingly decided to exercise my powers under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions.

Background

10. Prior to 1 April 2011 a single mixed voluntary aided primary school (Yesoiday Hatorah School, which opened in 1945) existed on the site which the two schools now occupy. On that date it converted to academy status. The girls' school opened on 1 August 2019, as I understand it as a new school, leaving the former school to admit only boys.

11. The multi-academy trust consists of the two schools: Yesoiday Hatorah Girls' Academy and Yesoiday Hatorah Boys' Academy, and it is the admission authority for both. Other than obvious references to the gender of pupils which attend them, the admission arrangements for the two schools are identical in every respect. I am therefore writing a single determination concerning these admission arrangements and all references to "the admission arrangements" concern those for both schools.

12. The admission arrangements begin by stating that the schools cater for children from families which are "Charedi", that is to say, which conduct their lives in accordance with strictly Orthodox Jewish Practice, as set out in the "Shulchan Oruch [sic]" (Code of Jewish Law). (I shall use the more common spelling of "Shulchan Aruch" as it appears in the majority of the correspondence in these cases).

13. Although I have not raised this matter with the trust in view of the number of other matters which I considered may fail to meet the requirements of the Code, it is of concern

that the placing of such a statement at the very beginning of the arrangements may make them unclear to readers and in contravention of paragraph 14 of the Code (which requires that arrangements are clear) because it implies that the only children who will be admitted are those to whom certain faith-based requirements are relevant. Although the subsequent oversubscription criteria make it clear that this is not the case, the placing of this statement may result in many parents reading no further. However, I say no more about this here and for the avoidance of doubt have not taken this matter into account in my consideration of the arrangements.

14. The arrangements for both schools state that the published admission number (the PAN) is 60 and go on to say that, while "the academy will meet its statutory obligation to admit any child whom the academy has to admit by law, providing the academy has been adequately consulted", if the academy is oversubscribed "priority will be given to applicants who meet the school's faith-based oversubscription criterion [sic]" and that applicants wishing to be considered for such priority should complete the schools' supplementary application form (SIF).

15. It is clear that the arrangements do not use a single faith-based oversubscription criterion, but more than one, since the oversubscription criteria are set out as:

> "1. A looked after "Charedi" child ["looked after" as defined in a footnote]
>
> 2. Children who will still have siblings [as defined in a footnote] in either Yesoiday HaTorah Girls' Academy or Yesoiday HaTorah Boys' Academy when they join the school and who live at the same address as the applicant
>
> 3. Oversubscription in any category [a footnote describes the use of the distance of the child's home from the school as the criterion which determines priority]
>
> 4. Children from "Charedi" families [a footnote says that "Families are required to produce a reference from the Rabbi of their community or synagogue certifying their degree of practical commitment" concerning the requirements set out in the SIF]
>
> 5. Other looked after children
>
> 6. Other children."

16. After referring to the arrangements for making appeals against the refusal of a place and to the issues of repeat applications and late applications, the arrangements say the following about in-year applications:

> "In-year admissions are managed on a case-by-case basis, depending on the year group in question and the availability of spaces within that year group, and the total number of children in the school. Most year groups are full, however, so few in-year applications can be considered, or places offered."

17. The SIF, which is part of the admission arrangements for the schools, says:

"Please enclose a copy of the child's birth certificate."

It also includes the question:

"In which Shul do you normally daven on Shabbos?"

and uses the terms "Rov" and "Rebbetzen" without explaining the meaning of any of the terms employed.

18. The SIF asks that parents seeking priority on the grounds of their Charedi status confirm that "we conduct ourselves in accordance with Strictly Orthodox Jewish Practice [sic], as set out in the "Shulchan Oruch" and in particular with the "Mehalech HaChaim Code"". Details of the Mehalech HaChaim Code are included in the SIF, and these specify a "Dress Code for Mothers". It also asks that this statement by parents is the subject of certification by the Rabbi of their community or synagogue (or by the Rebbetzen if the statement is made by the child's mother) in the form of "I….certify that to the best of my knowledge Mr……and his family conduct their lives in accordance with….the "Shulchan Oruch" and in particular with the "Mehalech HaChaim Code." The form allows the signature of an alternative Rov (Rabbi) or Rebbetzen to be used if that of the person's Shul (synagogue) is "inappropriate for any reason".

Consideration of Case

The statutory framework

19. I begin by summarising for the reader the statutory framework which is relevant to the admission arrangements of schools which are designated as having a religious character, insofar as it is relevant to my consideration of the matters listed above.

20. Paragraph 1.36 of the Code requires schools designated with a religious character, like all publicly funded mainstream schools, to offer every child who applies, whether of the faith of the school, or of another faith, or of "no faith", a place at the school if there are places available. They may, however, use faith-based oversubscription criteria if oversubscribed. The sole exceptions to this rule are grammar schools and these schools are not grammar schools.

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

on the grounds of religion or belief in the arrangements it makes for deciding who it admits as a pupil if oversubscribed. Section 6 of the Academies Act 2010 has the effect that a voluntary school designated under section 69(3) of the School Standards and Framework Act 1998 which converts to academy status is to be treated on conversion as an independent school which has the same religious character.

22. Some further provisions of the Code are especially relevant to my consideration of this case. Paragraph 1.37 requires it to be easy for parents to understand how faith based criteria "will be reasonably satisfied". It also says that either all looked after and previously looked after children (LAC/PLAC) must be given highest priority, or that those LAC/PLAC "of the faith" must be given priority over other children of the faith and that those LAC/PLAC not of the faith given priority over other children not of the faith.

23. Paragraph 1.9i forbids the prioritisation of children on the basis of their own or their parents' past or current hobbies or activities, but as an exception permits schools with a religious character to take account of religious activities "as laid out by the body or person representing the religion or religious denomination".

24. The meaning of "laid out" was considered in the case of Governing Body of the London Oratory v The Schools Adjudicator [2015] EWHC 1012(Admin) in which the judge (Cobb J) said that: "the phrase "laid out" means specifically 'laid out' in schools admissions guidance published by the religious authority – ie specifically provided for or authorised by such guidance." I understand the meaning of "published" for this purpose to mean that the guidance has been provided in a form which makes it generally known and available, and that this would most commonly be in written form. By generally known and available, I do not mean that it would necessarily have to be available on say a publicly accessible website but that it should certainly be able to be produced if requested from the faith body.

25. I also understand "religious activities" to mean those things that a person might do actively to practise a faith. So any religious activities which a school uses in order to discriminate between applicants for admission must be "specifically laid out" in guidance from its religious authority. This includes any reference to an individual's practice of the faith, that is to say to their religious observance and its frequency/consistency or duration. If such activities are not laid out in guidance, they may not be taken into account in a school's admission arrangements.

26. Paragraph 1.38 requires the admission authority to "have regard to" any guidance from their faith body when constructing faith-based admission arrangements "to the extent that the guidance complies with the mandatory provisions and guidelines" of the Code, and to consult that body when deciding how membership or practice of the faith is to be demonstrated. Since membership of a faith is not an activity, how it is defined is not caught by the requirement of paragraph 1.9i that it be specifically laid out in guidance from a school's faith body.

27. The following paragraphs of the Code are relevant to the admission arrangements of all schools, and will also be referred to below:

Paragraph 14 says:

> "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."

Paragraph 1.8 of the Code says:

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

I turn now to my consideration of the objections made to the arrangements of both schools.

Compliance with equalities legislation

28. The objector says that because the arrangements give priority to children from families which conduct their lives in accordance with strictly Orthodox Jewish Practice, and because the SIF requires mothers to attest to their adherence to the dress code which is provided there, that this fails to meet the requirement of paragraph 1.8 of the Code that oversubscription criteria must "comply with all relevant legislation". The objector says that placing greater requirements on women than men constitutes a breach of equalities legislation, and I have set out above which aspect of such legislation I understand this to refer to, and how the Equalities Act 2010 is relevant to school admissions in general.

29. The trust responded that [in Orthodox Judaism] there are modesty requirements which are made concerning both men and women and that like other "great religions of civilisation" these differ between the sexes. Further, it says, Jewish law "specifically differentiates between men and women as to covering various parts of the body as indeed British law does." It adds that these differing requirements do not make it impossible for a single parent family to satisfy them in the schools' admission arrangements.

30. First, I note that there can be no doubt that the observance of specified codes of dress in this context is a religious activity, and that it falls under the exception provided in paragraph 1.9i for such activities if they are laid out by a school's religious authority. That is, there is no prohibition, in principle, to them forming part of a school's oversubscription criteria. I will however have more to say below about the issue of what has been "laid out" in this case.

31. Setting that to the side for one moment, this aspect of the objections is that equalities legislation is breached in the way that dress requirements are set out in the schools' arrangements. Having different religious practice requirements for men and women does not constitute discrimination that is prohibited by the Equality Act. Therefore, I do not uphold this part of the objections.

Whether the arrangements are unreasonable

32. The objector says that it is not reasonable to ask someone to confirm "full adherence" with the Shulchan Aruch, which is a complex and detailed set of requirements (and so, that this oversubscription criterion is not reasonable and contrary to the requirements of paragraph 1. 8 of the Code as a result) and that most parents would not be aware of these requirements (and so, that the arrangements fail to comply with the requirement of paragraph 1.37 of the Code that "parents can easily understand how any faith-based criteria will be reasonably satisfied").

33. I understand that the Shulchan Aruch (or "the Code of Jewish Law", as the trust's response provides) is a very lengthy work, running to over 600 chapters. It includes detailed instructions on matters such as prayer, the study of the Torah, the preparation of food and the observance of the Sabbath. The trust says that "it is accepted throughout the world as the authority on how a Charedi Jew is to conduct his/her life", and that "The definition of the Faith [Orthodox Judaism as understood by the Charedi community] is…..subscribing to the code of law known as the Shulchan Aruch and its commentaries."

34. The trust has also said that "It cannot reasonably be said that the wording of the SIF is unclear. On the contrary the wording is very clear and unambiguous." It says that parents who are from the Charedi community will be fully aware of the Shulchan Aruch and that every Charedi Orthodox Jewish child "will from infancy be taught all the relevant laws" and that parents "will know if they undertake full adherence with the Shulchan Aruch". It says that parents who are not of the faith will very probably not even be aware of the Shulchan Aruch, and will therefore know that they cannot make the statement concerning adherence to it on the school's SIF.

35. Let me first look at the wording which the trust says is clear and unambiguous, as it is the arrangements themselves, and not what parties say about them, that is the matter before me. I have already referred to the first paragraph of the arrangements and the statement made there concerning families which conduct their lives "in accordance with" [Charedi] Orthodox Jewish practice. It is this phrase ("in accordance with") that is repeated elsewhere in the arrangements and on the SIF in relation to attestations as to, and certification concerning, the practice of the family. That is, although I have read the arrangements carefully more than once, I have been unable to find in them the phrase "full adherence" (with the Shulchan Aruch) which the objector uses and to which the trust has nevertheless responded. It is my understanding that "in accordance with" has a very different meaning in its ordinary use to "full adherence with", especially when it comes to the question of what might be reasonable, which is the basis of the objection which has been made. "In accordance with" means to me, and I suspect to the vast majority of those likely to read and seek to understand the arrangements, something like: "along the lines of", or "not out of sympathy with", which is a much lower level of test than "in full adherence with" might be.

36. The basis of the trust's response sets out its view about the clarity of what the arrangements say, and I imagine that this is because of the objector's view that the

requirement to live in full adherence with the Shulchan Aruch is not easy for parents to understand because of its complexity. However, as I have said, full adherence is not the requirement made in the arrangements, and because it has concentrated on the matter of clarity, the trust has not directly addressed the issue of the reasonableness of the arrangements. I can see that a requirement to live in "full adherence" with the detailed requirements of the Shulchan Aruch might well be clear but unreasonable, just as for example a requirement to be able to recite the complete works of Shakespeare is perfectly clear, but obviously unreasonable. The test of reasonableness that is relevant to the actions of a public body such as a school's admission authority (in this case, the trust) is whether a policy or decision is "so unreasonable that no reasonable authority acting reasonably could ever have come to it." This is found in Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223, and it has become known as the test of "Wednesbury unreasonableness".

37. The trust's submission about the locus of The Shulchan Aruch in Charedi Orthodox Judaism, that subscribing to this code is how Charedi Orthodox Judaism defines itself, is relevant here. The school wishes to give priority to children from Charedi families, and it is reasonable for reference therefore to be made in its admission arrangements to the nature of the observance which it is guided by its religious authority (concerning which I shall have more to say below) to be that which defines them. It would be strange if that were not so, and this seems to me to be a reasonable approach on the part of the trust. Neither do the length and complexity of the Shulchan Aruch in themselves mean that a requirement to live "in accordance" with its tenets is unreasonable, given how I believe this phrase will be understood by Charedi parents reading it, and given the likelihood that parents who attest to doing so will be familiar with its requirements for the reason that the trust has stated. I accept too that other parents will either not have heard of it and so will not believe they live in accordance with it or, if they have heard of it, say being from a liberal Jewish community or being particularly knowledgeable about world faiths, will know that they do not live in accordance with it or at least in the case of non-Charedi Jews not in the way the Charedi community interprets it. I shall consider below the equally important requirement that admission arrangements be objective, but as far as the objections to the arrangements on the grounds of their reasonableness for the above reason are concerned, I do not uphold it.

Is the requirement of Rabbinical confirmation reasonable and objective?

38. The trust has not accepted the objector's view that because the SIF asks that two Rabbis confirm a family's statement that it complies with the requirements of the Shulchan Aruch in the way described above, that the arrangements are therefore neither reasonable nor objective, since such practice is not capable of verification. It told me that:

> "In Jewish law, every person has a "Chezkas Kashrus". This means that one must assume that one conducts him/herself in accordance with the Shulchan Aruch unless there are reasons to doubt it. As per the supplementary information form, it is therefore reasonable for a Rabbi to say that *"To the best of my knowledge MrX and his family conduct their lives in accordance with strictly orthodox Jewish Practice[sic] as set out in the Shulchan Aruch and in particular in accordance with the Mehalech*

Hachaim code." Because the Rabbi (or the Rebbetzen in the case of the mother) will be applying the concept of *Chezkas Kashrush* and using his/her objective knowledge of the family in terms of their public practice of Orthodox Judaism."

39. First, I have set out above what the SIF actually requires, and this is not two confirmatory signatures, but only one. Second, the wording used in this affirmation is indeed, as the trust says, "to the best of my knowledge".

40. There are a number of matters to which I need to make reference before setting out my views as to how they affect the extent to which this aspect of the arrangements is or is not in compliance with what the Code demands. First, there is reasonableness, which I have discussed in general terms above. Second there is the question of objectivity, which is also a requirement of paragraph 1.8 of the Code. Third I need to consider the relationship between self-certification by parents of their religious practice and certification concerning religious practice by somebody else.

41. The Code does not define the term "objective", but Oxford English Dictionary gives the following as (relevant) uses of this word:

> "Not influenced by personal feelings or opinions in considering and representing facts", and
>
> "Not depending on the mind for existence; factual"

What I think this means for the oversubscription criteria which are used in the admission arrangements of schools to give priority to one child over another when a school is oversubscribed is that they must be factual in nature, and capable of being evidenced or tested. That is to say, they would be unlikely to be understood differently by different people.

42. Decisions made by the adjudicator in previous cases concerning the admission arrangements of schools which give priority to children from Charedi Orthodox Jewish backgrounds have had to consider the issue of certification of their practice by parents and of the confirmation of such certification by a religious leader. Concerning the former, the adjudicators in ADA3380 and ADA3530 have made clear their reasoning for saying, in the first place that it is not possible for a Rabbi to confirm any aspects of Orthodox Jewish practice which do not take place in public because this cannot be objective in nature, but that in such circumstances self-certification is a reasonable approach provided it is made clear in admission arrangements precisely what is being attested to. While adjudicator determinations do not set precedents, I take the same view as these adjudicators and I do not need to repeat their reasoning here.

43. Concerning Rabbinical confirmation, the adjudicator in ADA3361 took the view that this should be "restricted to what might be termed 'public' practice that can be objectively assessed". In ADA3781 it was the adjudicator's view that it should be clear in admission arrangements (where these circumstances apply) as to which matters are private and which public and, further, that arrangements should make it clear that in the absence of

contradictory evidence rabbinical confirmation will always be given. Again, I take the same view as these adjudicators, whose reasoning can be followed in these earlier determinations.

44. I appreciate what the trust has told me about the concept of “Chezkas Kashrus” and the use of their objective knowledge of the public practice of parents by the Rabbi or Rebbetzen. However, my function is to consider whether admission arrangements comply with the requirements of the Code, and whether or not they are in accordance with or rely on any particular aspect of Jewish law is immaterial to that consideration. If admission arrangements are to meet the requirement of objectivity, the matters which confer priority under a school’s oversubscription criteria must be those which meet the same test. That is, if parents are asked to self-certify concerning their private practice, it must be clear to them, and therefore clear in the arrangements of the school, what those matters are and “how they will reasonably be satisfied”. I shall return to the question of how clear the arrangements are in this respect below.

45. Equally, those matters of religious observance which are the subject of Rabbinical affirmation must be clear and they must be only those which are public in nature. The trust has said that the latter is the case, but the arrangements do not say this in terms, only that the affirmation is to the best of the knowledge of the Rabbi/Rebbetzin. While the trust may take the view that only publicly observable practice is implied by the phrase “to the best of my knowledge” in the arrangements, I do not consider that to be the case, as some awareness of private practice could potentially be involved. That is, the wording of the arrangements does not rule this out, and any such could not be said to be a reasonable approach. In order to be compliant, the arrangements need to state clearly that only public observance is the subject of Rabbinical confirmation, what that comprises and that confirmation will be given in the absence of evidence of non-compliance.

46. The arrangements ask for Rabbinical confirmation of the practice to which parents have certified their adherence as a whole, not in part, and do not differentiate between private and public observance. The SIF provides parents with “The Melahlech Hachaim Code” which includes a dress code for mothers and refers to dress requirements for men and for girls and boys. The arrangements do not say that these are requirements that apply only in public or at public acts of worship, and my reading of them in the light of their opening statement which uses the phrase “all aspects of their lives” is that private observance of codes of dress is included in what the Rabbi/Rebbetzen is asked to certify. I note that the guidance provided by the faith body states explicitly “Please note that all these rules of dress apply when coming to the school and outside of school.” Other matters in the SIF, such as how children speak, what television or internet access is permitted in the home and how children may or may not participate in sport all clearly refer essentially to private behaviour.

47. For the reasons given above, none of these private activities can be objectively certified by the Rabbi/Rebbetzen and so the arrangements fail to be reasonable in their requirements or objective in nature, and I uphold this aspect of the objections which have been made to them.

48. For the avoidance of doubt, it is not the case that private observance of religious activities which have been set out in guidance from a school's faith body cannot be used in its oversubscription criteria. But if they are used, they must be clear in nature and the subject only of parental affirmation.

Are the oversubscription criteria clear?

49. The trust has told me that it is necessary, when considering the clarity of the phrases used in the SIF to describe the behaviours and required dress code which are contained in the "Mehalech HaChaim Code", to read the SIF "as a whole" and that "it is irrational to consider each word in isolation". It says the following:

> "It is submitted that as a whole the SIF sets out clearly and objectively the requirements regarding compliance with the Mahalech Hachaim [sic] Code for fathers and mothers. 'Eye catching' and 'refined' are ordinary English words and should be given their ordinary meaning. 'Eye catching' means 'immediately appealing or noticeable' – that is an objective statement – and 'refined manner' means 'genteel, elegant, polite'. Again it is submitted that this is objective."

50. The trust has given no explanation for its view that the SIF "as a whole" is clear, and I have tried but failed to find any rationale for believing that this might be the case.

51. I can see that there can be no doubt when reading the SIF as a whole that it sets out detailed expectations that describe a particular way of life, but it does not follow that this understanding makes the individual requirements that are there any clearer. The Code requires oversubscription criteria to be both clear and objective because they are the means which are used to determine which children are admitted to oversubscribed schools, and which are not. That is a process which must take place transparently, and in order for that to be the case it is necessary that the basis for decisions is clear and that it is arrived at in an objective fashion. The criteria used must therefore be capable of being applied without having to resort to subjective judgements, and so what is meant by them must be clear to the reader. I would turn the trust's view of this on its head and say that if the individual words which are used in a document are not clear and objective, then the whole cannot be.

52. Words which the objector has identified such as "unacceptable" in the phrases "unacceptable 'entertainment'" and "unacceptable films" must involve a subjective view to be taken when coming to an understanding of what they mean. What is unacceptable for one person need not be unacceptable for another, since they will apply their own, different, standards of acceptability. Used as an oversubscription criterion in school admission arrangements, this clearly fails to be objective in nature and is therefore also unclear. If, for example, the arrangements set out parameters by which a film, say, might be judged, that could be different - such if they provided that any film which included swearing or nudity was unacceptable. But they do not.

53. The same points apply to the examples used by the trust in putting forward its argument above. It is quite appropriate, as it says, that words should be given their ordinary English meaning, but it does not follow that because a word like "refined" can be

understood to mean in itself what the trust has said that this makes it objective, since the words used to define it also require a subjective judgment to be made. I doubt if any two people selected at random from the general population would be likely to agree whether a particular object (let's say a vase) was "elegant" or not, as this is an entirely personal and subjective judgement.

54. I have given my view about the use of "refined", and the other example used by the trust of "eye-catching" would also fail the test of objectivity, for the same reason. The objector has identified further words or phrases which are used in the SIF and which for the same reason fail to be objective in nature, making the arrangements unclear for the reader. As with my example in relation to entertainment, the same arguments apply. I uphold this aspect of the objections.

Compliance with paragraph 1.9i of the Code

55. I have set out above the relevance of paragraph 1.9i in this case. Religious activities include anything which a person does which is used to distinguish them from another person as a member of the faith. If these are not specifically laid out, that is to say published in guidance from the faith body for the school, they may not be taken into account in school admission arrangements.

56. The objector has said that the arrangements fail to comply with this requirement because matters of religious observance to which parents are asked to state their adherence are not so laid out, but are more to do "recent cultural practice" and "not based on Jewish law". It is not for the adjudicator to be concerned with whether something is or is not based on Jewish law, or that of any religion. What is relevant to my consideration is whether matters are laid out in guidance by the faith body as matters which a school can take into account in their admission arrangements, or whether they are not.

57. The trust has told me that "the Machazikei Hadass has not provided general or specific guidance on religious activities and practices for school admission arrangements", but that it has requested that it should do so in its case, and a document entitled "Directive on Religious Activities for the purpose of School Admission Arrangements" was kindly forwarded to me by the trust's legal representative on 21 September 2023.

58. This document, under the Machzikei Hadass Communities logo, was in the form of a letter to the trust, and referred at the outset to the two schools whose admission arrangement are the subject of this determination. I note that the approach which it describes is that it expects "schools to prepare their admission arrangements and then to send those arrangements to us for review" and that if its Rabbinical panel is satisfied "this is then sent to the specific school as a religious activity directive." It is not clear to me whether (in spite of its apparent title) the document which I have been sent is intended to be this specific directive for the schools or not, but given the sequence the faith body envisages (since I assume this is a new approach, given the above) this could be the case. I do not think that paragraph1.9i prohibits this, since what is important is whether the faith body provides specific guidance which lays out the activities which the school takes into account, not the timing of it doing so. However, the admission authority for a school which has a

religious character must always await receipt of guidance which authorises the activities it is intending to use before formally determining its arrangements, or they will at that point fail to comply with paragraph 1.9i of the Code.

59. The faith body's document does not form part of the school's admission arrangements and so my consideration of it extends only to whether the religious activities used in those arrangements are laid out in it, and to the extent to which the guidance itself "complies with the mandatory provisions and guidelines of this Code" (paragraph 1.38 of the Code). Concerning the second point, I must note in passing therefore that the statements which the guidance makes that, first, the religious activities it describes "must be included in the admission arrangements of the academies" and second that parents "have to agree to adhere to the guidelines below", do not meet mandatory requirements. An admission authority need only have regard to guidance (paragraph 1.38) (and so does not have to follow that guidance slavishly) and then only so far as that guidance is compatible with the Code's requirements. It is not permitted by the Code to place conditions on the consideration of applications for school places other than those in its oversubscription criteria (paragraph 1.9a) and so requiring a commitment to future behaviour is not Code-compliant.

60. I have read the guidance which the faith body has provided and I have noted that the following, which are included in the "Dress Code for Mothers" attached to the schools' SIFs, are not contained within it:

(i) "Skirts should not be too long that they reach further than the ankles"

(ii) "Clothes should not be see-through"

(iii) "No "faded" material"

(iv) "No writing on clothes"

(v) "Fashions from the outside world, which are inappropriate, should not be allowed to penetrate our mode of dress and should be avoided at all costs eg leather skirts, maxi dresses, etc."

61. As a result, the arrangements fail to comply with what paragraph 1.9i of the Code requires and I uphold this aspect of the objections, but not for the reason stated by the objector.

62. I understand the objector's view that aspects of the Mehalech Hachaim Code are a direct contradiction of the British values curriculum to be that aspects of the behaviour of parents and children which it describes are inimical to the fulfilment of the requirement that schools should promote the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs, in accordance with the Prevent Strategy, 2011. It therefore concerns the curriculum of the schools and is not a matter for me. For the avoidance of doubt, while I say I understand the

objector's view to mean what I say above, that means only that I understand what that view is. I have formed no view whatsoever on this matter.

Other Matters

63. Paragraph 1.6 of the Code states plainly that "All children whose Education, Health and Care Plan names the school **must** be admitted." The trust has accepted that the condition concerning consultation attached to its statement about admitting children "whom it must admit by law" is inappropriate. However, as determined, the arrangements fail to comply with what the Code requires.

64. The trust has responded to my concern about the priority given to Charedi looked after and previously looked after children by saying that the academies' designated religious character is "Jewish" and that "the faith" in the context of the schools is "the Charedi movement in orthodox[sic] Judaism" and that it is therefore permissible for the trust to prioritise Charedi looked after and previously looked after children.

65. Regulation 9 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements (England) Regulations 2012 sets out the provisions which are repeated in paragraph 1.37 of the Code. This says that:

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

66. However, instead of the phrase "of the faith" when referring to the children who can be given priority, Regulation 9 sets this out more fully as children "of the same faith as that of the school in accordance with its designation" having already said that the regulation as a whole applies to "an admission authority for a school which has been designated as having a religious character under section 63(3)" (of the Act). The schools' designated character is "Jewish" and as a result the arrangements may not give first priority to Charedi Jewish children only. The arrangements must give first priority to all looked after or previously looked after children, or if the trust wishes to prioritise looked after or previously looked after children of the faith, to such children who are Jewish. The arrangements fail to comply with what is set out in paragraph 1.37 of the Code.

67. I note here that the presence of an oversubscription criterion in the arrangements which gives priority to siblings who are not defined as "Charedi" or "Jewish" could mean, if the trust does not amend the arrangements by giving priority to all children who are looked after or previously looked after, that any non-Jewish siblings would be given a higher priority than non-Jewish looked after or previously looked after children (who would be prioritised after "Children from Charedi families"). This would be contrary to what paragraph 1.37 requires and the trust will need to bear this in mind.

68. The trust has agreed that the third oversubscription criterion, which is simply stated as being “Oversubscription in any category” is confusing to readers and that it should be removed. Paragraph 1.8 of the Code requires oversubscription criteria to be clear and so, as determined, the arrangements fail to comply with this requirement.

69. The trust has also acknowledged that the definition of looked after and previously looked after children which the arrangements contain does not include a reference to those children who were previously in state care outside England and that it also refers to a residence order as opposed to a child arrangements order. As determined, the arrangements fail to conform with the definition of this group of children as set out in paragraph 1.7 of the Code.

70. Paragraph 2.28 of the Code says:

> “With the exception of designated grammar schools, all maintained schools, and academies, including schools designated with a religious character, that have places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria, unless admitting the child would prejudice the efficient provision of education or use of resources.”

71. Paragraph 1.4 states explicitly that PANs apply only to a relevant age group (one in which children are normally admitted to the school) and together with paragraph 2.28 this means that admissions to other year groups, which are “in-year admissions”, are governed solely by the principle of “prejudice”. Although the trust has said that such applications are “managed on a case by case basis” as should be the case, the arrangements do not say this, but rather that few in-year applications “can be considered”. As a result they fail to conform with the requirement set out in paragraph 2.28 of the Code.

72. The trust has agreed that it is inappropriate that a child’s birth certificate is required to be provided by parents along with any complete SIF. This is specifically forbidden by paragraph 2.5 of the Code, which this requirement in the arrangements breaches.

73. Paragraph 14 of the Code requires that the practices and criteria used to decide the allocation of school places are clear and paragraph 1.37 that:

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

74. The trust has not responded to my concerns about the clarity of terms such as “Shul”, “daven”, “Rov”, and “Rebbetzen” which are used in the arrangements, but has told me that it does not believe that the use of Hebrew script makes the arrangements unclear or not easily understood. It told me that Manchester is a diverse language community and that it would not be expected to produce admission arrangements in all these languages, which is of course true, but not relevant here. My concern is not that the arrangements are not in languages other than English, but whether they are written in an English that the ordinary English speaker would be able to understand.

75. The trust says that it is “rational” for its admission arrangements to “reflect, within reason, the community to which the faith school is predominantly aimed [sic]”. Paragraph 1.37 refers to “parents” and I understand this to mean any parent who might read the arrangements, rather than a particular group of parents. The terms I have highlighted above all appear in the schools’ SIF, which also use Hebrew script in eight places. Sentences such as “Parents undertake to adhere to the [Hebrew script] of the [Hebrew script] in relation to the internet” are self-evidently unintelligible to anyone who does not read and understand Hebrew script. In other places there may be an English word provided as a translation of the script but this is by no means clear, as in “Fathers will normally wear a jacket and hat ([Hebrew script]) for every [Hebrew script]”, where it seems that the script that follows (in brackets) the word “hat” may be a translation of it into Hebrew, but where that which follows the word “every” clearly is not.

76. And my view is that even if an English translation were to be provided of Hebrew script wherever it appears, the arrangements would be cumbersome to read either by a fluent speaker of English or for any other person reading them, and unnecessarily so since I do not believe that it is impossible for the arrangements to convey clearly what they mean solely by using ordinary English. To meet the requirement that they be clear, they must be written in ordinary English. Terms which are unlikely to be understood by most parents and the presence of Hebrew script make the arrangements, and in particular the faith-based oversubscription criteria unclear, in breach of the requirements of paragraph 14 and of paragraph 1.37 of the Code.

77. I add a note here about the relationship between the clarity of guidance provided by their faith body and the clarity of the schools’ admission arrangements. Some terms which I have referred to above which are used in the arrangements can be found in the guidance to the schools from the Machzikei Hadass, as can Hebrew script in a number of places. The guidance also uses words which require a subjective interpretation such as “refined”, and “discreet”. It is entirely open to a faith body to provide its guidance in any terms it chooses, and religious activities which may be used by a school in faith-based oversubscription criteria do need to be laid out by it. However, admission arrangements are not saved from the requirements concerning them such as clarity and objectivity simply because the words or phrases they use are those which appear in such guidance. It is for the admission authority for the school to use the guidance provided by its faith body to produce admission arrangements which conform with all the requirements which are placed on them in the Code and elsewhere, and if necessary to wrestle themselves with the meaning of the words and concepts so provided before admission arrangements are determined.

Summary of Findings

78. I have set out my reasons for coming to the view that the admission arrangements

(i) do not breach equalities legislation;

(ii) do not make an unreasonable requirement that those seeking priority for admission on the grounds of their faith live their lives in full adherence with the

requirements of the code of Jewish law, the “Shulchan Aruch” and so do not make the faith-based criteria in the arrangements difficult for parents to understand for this reason;

(iii) do contain oversubscription criteria which fail to be reasonable and which are not objective in nature, and

(iv) do contain oversubscription criteria which are unclear.

I have also stated why it is my view that aspects of the arrangements result in further breaches of the provisions set out in the following paragraphs of the Code: 14, 1.6, 1.7, 1.8, 1.37, 2.5 and 2.28.

79. It is not for the adjudicator to specify what changes the trust needs to make to the admission arrangements of the schools. However, in view of the length of this determination and the fact that a number of the matters dealt with in it overlap with one another, I have set out below what I believe to be the considerations relevant to decisions that the trust will need to make in revising those arrangements, some of which it has helpfully already identified in correspondence:

Concerning the arrangements as a whole	**Concerning the schools’ faith-based oversubscription criteria**
Conformity with paragraph 1.6 concerning the admission of children with an EHCP Conformity with the 2021 Code concerning the definition of children previously looked after In-year applications to be considered on the basis of “prejudice” only Children’s birth certificates should not be asked for	Looked after and previously looked after children of “the faith” means all such children who are Jewish Religious activities taken account of in oversubscription criteria can only be those which are “set out” in guidance from the schools’ faith body, and they must be objective in nature Rabbinical certification of religious practice can only relate to public observance and arrangements should make clear what practice this includes Parents can self-certify concerning private observance, if the matters are clearly stated All terms used in the arrangements must be clear, and stated in English

Determination

80. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements determined by Yesoiday Hatorah Multi Academy Trust for Yesoiday Hatorah Girls' Academy and Yesoiday Hatorah Boys' Academy, Manchester.

81. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

82. By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 15 January 2024.

Dated: 5 December 2023

Signed:

Schools Adjudicator: Dr Bryan Slater