



Determination

Case reference:	REF4196
Referrer:	A member of the public
Admission authority:	Broughton Jewish Cassel Fox Academy Trust for Broughton Jewish Cassel Fox Primary School, Salford
Date of decision:	13 March 2024

Determination

I have considered the admission arrangements for September 2024 for Broughton Jewish Cassel Fox Primary School, Salford in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to three of the matters contained in the referral and in a number of other respects the arrangements 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 set by the Schools Adjudicator. In this case, I determine that this shall take place within one month of the date of this determination.

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 Broughton Jewish Cassel Fox Primary School (the school), for September 2024. The date of the objection was 14 May 2023.
2. The referral relates to the following matters. That:
 - (i) modesty rules which are used set out as religious observance criteria in the

school's supplementary information form (SIF) do not comply with the requirements of the Equality Act 2010;

- (ii) the section in the school's SIF which requires parents to make a commitment concerning their agreement with certain school policies fails to comply with the requirements of the Code. The referrer did not state this, but I understand this to be a complaint that this is contrary to the requirement of paragraph 1.9a) of the Code concerning the placing of conditions in the consideration of applications;
- (iii) the PAN of 60 (which is a reduction from the PAN of 90 for 2023) does not reflect the local demand for places at the school. The objector did not say this, but I understand this to be an objection that the PAN is unreasonably low, which results in the arrangements being unfair, in contravention of paragraph 14 of the Code;
- (iv) the school's "application form" requires parents to certify that they will pay voluntary contributions in respect of religious instruction. The objector did not state this, but I understand this to be an objection that the arrangements are in breach of paragraph 1.9n) of the Code which expressly prohibits admission authorities from requesting financial contributions, and
- (v) the same form asks for a copy of parents' ketubah (Jewish marriage contract). The objector did not say which aspect of the Code this may breach but I understand this to be paragraph 2.4a) concerning the information which admission authorities may ask for using any type of supplementary form.

Other Matters

3. When the arrangements were brought to my attention, I considered that the following additional matters did not, or might not, conform with the requirements for admission arrangements. That:

- (i) statements made in the introduction imply 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, I was nevertheless concerned that the placing of these statements at the start of the arrangements is likely to mean that many parents will read no further and that these statements render the arrangements unclear, in breach of the requirements of paragraph 14 of the Code;
- (ii) the arrangements give highest priority to Orthodox Jewish children who are looked after or previously looked after (LAC/PLAC). I was aware that clarity concerning the school's faith designation was awaited but was concerned that this may not conform with the requirement of paragraph 1.37 of the Code. This states that any such priority must be given either to all children who are LAC/PLAC or to such children "of the faith" (the faith for which the school is

designated) before that given to other children of the faith. So if the school's faith designation was "Jewish", the arrangements would fail to meet this requirement because they do not give priority to all LAC/PLAC children or to those of the faith of the school (Jewish LAC/PLAC children). If the school's faith designation was instead "Orthodox Jewish", the same provision would mean that "Other Jewish children" could not be given a higher priority than "Other children who are LAC/PLAC", as is currently the case;

- (iii) the arrangements give priority on the grounds of faith to Orthodox Jewish children, and separately to Jewish children. A definition of what is considered necessary to meet the definition of Orthodox Jewish is included in the arrangements, but they provide no definition of the term "Jewish" for the purpose of giving priority for admission. The arrangements may therefore be unclear, in contravention of paragraph 14 of the Code and fail to ensure that parents can understand easily how faith-based criteria will be reasonably satisfied in contravention of paragraph 1.37 of the Code;
- (iv) the arrangements contain no statement concerning the admission of children below compulsory school age and concerning deferred entry to school as required by paragraph 2.17 of the Code;
- (v) the SIF asks parent for information concerning siblings who have previously attended the school and concerning eligibility for the Pupil Premium. Neither has a direct bearing on admissions to the school and this may contravene paragraph 2.4 of the Code;
- (vi) the SIF asks for Rabbinical certification of some practices by families which are not publicly observable. This may mean that the oversubscription criteria in the arrangements to which these matters are relevant are not objective in nature, in contravention of the requirement of paragraph 1.8 of the Code;
- (vii) the role of an "application form" which is present on the school's website is not stated in the admission arrangements, which refer only to the local authority common application form (CAF) and the school's SIF. This may render the arrangements unclear, in contravention of paragraph 14 of the Code;
- (viii) the "application form" requests the following information which is not directly related to decisions about oversubscription criteria, and which may therefore fail to comply with the requirement in paragraph 2.4 of the Code that it may not be requested:

The child's nationality and gender. The languages spoken at home, the child's ethnicity, the previous school attended, the synagogue attended, and Rabbi contact details. Other medical and personal information, the mother's maiden name, the child's birth certificate or adoption certificate, and details of other children in the family.

(ix) I was also aware that, through no fault of its own, the school had no prescribed faith body. I understood that the Office of the Chief Rabbi (the OCR) had been approached and had stated its willingness to be so designated, but that the trust for the school would need to amend the school's Funding Agreement (it is an academy) in order for this to be the case formally. As a result, no such body had laid down for its use religious activities that may be taken into account in oversubscription criteria (paragraph 1.9i of the Code). I was of the view that, subject to the resolution of this position, the use of all such matters in the arrangements which define Orthodox Judaism may not be in accord with the requirements of the Code.

4. The parties to the case are the academy trust (the trust), the local authority (the LA), the OCR and the referrer.

Jurisdiction

5. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school, on 29 July 2023, on that basis. This is after the statutory deadline for determination which was 28 February 2023. The late determination of the arrangements does not affect their validity or my jurisdiction to consider the arrangements. When they 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.

6. The referrer has asked to have her identity kept from the other parties and this request has been agreed by the Chief Adjudicator.

Procedure

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

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

- a) the referrer's form of objection dated 14 May 2023 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;

- d) comments on behalf of the admission authority provided by its legal advisers on the matters raised and supporting documents;
- e) a copy of the written guidance concerning its admission arrangements which the OCR has told me it would provide to the school were the OCR to be the school's designated faith body, and
- f) information concerning the recent demand for places at the school provided by the LA.

9. I have also taken account of information received during a meeting I convened (via Teams) on 24 November 2023. The meeting was attended by representatives of the school's legal advisers (representing the school), the LA and the OCR.

Background

10. At the meeting which I held with the parties, the legal advisers representing the school confirmed that it converted to academy status on 31 July 2012, having previously been a voluntary aided school. At that time, its Rabbinic authority (the faith body) was Va'ad HaChinuch, but it is understood that this group became defunct in 2023 following the decease of all its members. As I say above, the school has been uncertain as to its faith designation, but for the reasons I shall give below, I am clear that this is "Jewish". Both the designation and the identity of the faith body are relevant to this case, and I have more to say about both of these related but distinct matters later in this determination.

11. On 14 May 2023 an objection was submitted which raised a number of concerns regarding what the referrer understood to be the school's determined arrangements for 2024. Subsequently that same person raised a further concern in related correspondence, and I have treated this aspect as a late objection. However, the arrangements had not been determined when the original objection was made, and since the deadline for making objections to these arrangements was 15 May 2023, it has not been possible to treat that as an objection made under section 88H(4) of the Act.

12. Since the arrangements had been brought to my attention I decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements which are set out in the Code. The case is therefore being treated as a referral, and in accordance with OSA practice I have asked the objector whether they wish to remain a party to the case and to continue to receive copies of the correspondence concerning it. The other parties were informed of the decision of the objector to remain a party.

13. On 11 October 2023 I received notification that the arrangements had been determined at a meeting of the school's Governing Board on 20 July 2023. There had been a long hiatus between these dates during which the school had not responded to my request to provide evidence of determination in spite of having been reminded of my request, and I was conscious that the school was also at that time in correspondence with

the Department for Education concerning its designated faith body. I shall return to this matter below.

14. The school had initially responded in June 2023 to a request to provide evidence that the arrangements which were the subject of the objection had been determined by it. However, I was not satisfied that this had taken place, and so I wrote to the school setting out the requirements and relevant dates concerning the determination of admission arrangements generally, and specifically in relation to the determination of arrangements for admissions in September 2023 and 2024.

15. It was not until 17 November 2023 that the school confirmed that the SIF and “application form” referred to above were those employed by it as part of the school’s admission arrangements for 2024, having first been asked to do so in June 2023.

16. I wrote to the school following receipt of confirmation of its determination of the arrangements, setting out my jurisdiction concerning the matters which had been raised by the referrer and also those matters which I considered may fail to comply with the relevant requirements. When I did so, I raised the issue of the school’s faith designation, explaining its relevance in relation to certain aspects of the arrangements. Again. I will return to this matter below.

17. The arrangements include the following:

(i) Initial statements, saying:

“We are delighted to welcome children whose families are understanding and supportive of the Torah ethos of our school” and:

“The school caters for children of families who conduct their lives in accordance with the laws of the Shulchan Aruch particularly in relation to the areas of Shabbos Observance (both privately and publicly) and Kashrus and Tznius.”

(ii) A statement that “The admission number for the school is 60.”

(iii) Oversubscription criteria, which in summary are:

- a. Orthodox Jewish children who are looked after or previously looked after (as defined).
- b. Orthodox Jewish children with a brother or sister (as defined) currently at the school.
- c. Orthodox Jewish children living within a radius of two miles from the school.
- d. Other Jewish children.
- e. Other looked after or previously looked after children.
- f. Other children.

(iv) A statement that:

“Applicants must provide evidence that the child meets the religious criteria. Applicants must complete the SIF and produce independent references as regards satisfaction of the requirements of Orthodox Judaism.

For the avoidance of doubt, the Governors define Jewish Orthodox as 1. Keeping Kosher as laid out in the Shulchan Aruch, 2. Observing Shabbos as laid out in the Shulchan Aruch, 3. Observing laws of Tznius (modest) dress code when on school premises, including females wearing knee length skirts and sleeves reaching the elbow and men wearing a yarmulka (skull cap).”

18. The school’s SIF states that it is the form which applicants seeking priority under the oversubscription criteria must complete and that it is to be signed by both a parent/guardian and that person’s Rabbi. It says that to meet the religious criteria, a positive response must be given to questions about key religious requirements (concerning diet, Shabbos observance and modesty of dress) and concerning a commitment to the school’s ethos, and to obtain “an acceptable reference from your rabbi”. “Other priority criteria” are given as:

1. Whether the child has a sibling at the school
2. Whether the child has a sibling who previously attended the school
3. Whether the child is eligible for the Early Years Pupil Premium, the Pupil Premium or the Service Premium.

19. The school’s website displays an “application form”, whose purpose is not explained. It requests the following information:

The child’s nationality and gender. The languages spoken at home, the child’s ethnicity, the previous school attended, the synagogue attended, and Rabbi contact details. Other medical and personal information, including the mother’s maiden name. It asks to be supplied with a copy of parents’ ketubah, the child’s birth certificate or adoption certificate. It asks for details of other children in the family.

It also contains the following sentence:

“I undertake to pay the contributions in respect of the Religious Instruction....”

20. As I have said, I am aware that the school intends that its designated faith body should in future be the Office of the Chief Rabbi (the OCR), and that the OCR has agreed to act in this capacity. I asked the OCR whether it wished to attend the meeting which I held and I was pleased that this invitation was accepted. The OCR has also accepted my invitation to become a party to this case. At the time of writing, the necessary formalities (which I understand to be the amendment of the school’s Funding Agreement via a deed of variation) for the OCR to become the faith body have not yet been completed but are in hand.

Consideration of Case

The statutory framework

21. 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 above.
22. 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.
23. 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.
24. 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 oversubscription criteria “will be reasonably satisfied”. It also says that either all looked after and previously looked after children (LAC/PLAC) must be given the highest priority for admission, 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.
25. 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”.
26. 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 – i.e. 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 capable of being produced if it is requested from the faith body.

27. 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.

28. 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 (as opposed to the practice 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.

29. 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.”

The absence of a faith body

30. The arrangements give priority on the grounds of faith to Orthodox Jewish children, and separately to Jewish children. The definition of Orthodox Judaism which is contained in the arrangements consists of activities undertaken by the individual (keeping Kosher, observing Shabbos and adhering to a modest dress code). This is in line with the decision of the Court of Appeal in 2009 (confirmed by the Supreme Court) that Jewish faith schools could not give priority based on membership of the Jewish faith by virtue of an applicant’s halakhical Jewishness. However, the judgment referred to above, that any such activities

must be specifically laid out in guidance from a school's faith body, means that if there is no such body, no such activities can have been laid out for use by the school in its admission arrangements.

31. I shall go on below to consider the aspects of the arrangements set out above and whether they conform with the requirements concerning them. Some of these matters concern faith-based elements of the arrangements and some do not. I shall deal with the former as if they had been laid out in guidance from a faith body. For the avoidance of doubt, it is nevertheless the case that for each of these matters if the school has no designated faith body which has provided them for use in its admission arrangements when these are revised, they cannot in any case be used.

Compliance with equalities legislation

32. When the school's legal advisers responded to the referrer's view about the modesty requirements contained in the SIF, it said that it was unclear what provision or protected characteristic was involved. This is surprising since the referrer's form of objection set this out in detail, alluding specifically to the separate requirements for men and women, concerning which the attestation of applicants is sought on the SIF. The referrer said that these held men and women to different standards and that they were discriminatory in nature as women would have to "change their clothes to come into school premises", whereas men would not.

33. The referrer believes that these different modesty rules constitute a breach of the Equality Act, 2010. However, having different religious practice requirements for men and women does not constitute discrimination that is prohibited by the Equality Act, 2010. Therefore, I do not agree with the referrer in relation to this part of the referral and do not find the arrangements non-compliant in this regard.

Conditions placed on applications

34. Again, the admission authority's representatives said they were unclear as to the nature of the objection. Again, I am of the view that the form of objection makes this clear, referring specifically to section 2 (of the SIF) where applicants are required to state their support for the school's "ethos", described in terms of specific school policies. I had told the school that my understanding was that the objection concerned paragraph 1.9a) of the Code which says:

".....admission authorities....**must not**:

a) place any conditions on the consideration of an application other than those in the oversubscription criteria published in their admission arrangements."

35. I note that one of these policies concerned the separate teaching of boys and girls for part of the school curriculum. Whether or not this practice is contrary to equalities legislation as the referrer has alleged is not material to my consideration, which concerns only the arrangements themselves and not the organisation of the school. The school may

however wish to consult the DfE non-statutory guidance “Gender separation in mixed schools” (June 2018) concerning this matter.

36. The SIF states that a person not answering the questions about the school ethos “positively” will not have met the school’s religious criteria and so this constitutes a condition placed on the consideration of their application, in contravention of paragraph 1.9a) of the Code. I agree with the referrer in this matter and find that this aspect of the arrangements does not conform with the requirements relating to admission arrangements.

The school’s PAN

37. The school has rejected the referrer’s claim that the PAN of 60 set for admissions in 2024 does not reflect the local demand for places. It believes that the PAN has “always been 60” as it has never had the physical capacity to accommodate a PAN of 90, and that its own admission arrangements in recent years have used the lower figure. It says that “there has seemingly been some confusion on the part of the local authority as to the school’s PAN in recent years”. However, the school did consult on reducing its PAN from 90 to 60 in December 2022, and the school says that this was with the encouragement of the LA. It says it received no objections to the proposed reduction.

38. Following the meeting which I held, I received the following information from the local authority concerning the recent history of preferences expressed for places at the school:

Year	Available places	Applications received by offer day	Number admitted
2021	90	27	40
2022	90	31	35
2023	90	47	46

39. The school has accounted for the discrepancy between the number of applications received and the number of children ultimately admitted in both 2021 and 2022 by saying that there were a number of late applications received in each of these years. Whatever the reason for this, the figures do seem to support the school’s view that there is insufficient demand to support a PAN of 90.

40. I have asked the school to provide a copy of its net capacity calculation, but it has not been able to do so. It has stated that the school’s Funding Agreement says its capacity is 393. I have located the information available through the Government website “Get Information about Schools” which says that the capacity of the former voluntary aided

school was 367, and the present entry says this is 451. A PAN of 60 would require 420 places of course, and one of 90 would require 630 places.

41. The school has sent me a copy of the email exchange with the LA referred to above which includes an email in November 2022 asking if the school was considering reducing its PAN (from 90) in 2024 and giving pupil forecast data showing a surplus of reception places in the relevant planning area of between 40 and 64 places in each of the next three years.

42. I have also asked the LA to confirm its view as to the appropriateness of the school's PAN of 60, together with the relevant pupil place planning information. It responded on 12 January 2024, saying that it had indeed supported the school in following the statutory process to reduce its PAN from 90 to 60 "due to the ongoing reduction in primary demand across the planning area and the level of surplus being carried by the school." In other words, I have no evidence that would support a view that the PAN at 60 is unreasonably low and the arrangements unfair as a result. I do not agree with the referrer in relation to this part of the referral and do not find the arrangements non-compliant in this regard.

Voluntary contributions

43. Paragraph 1.9n) of the Code says that:

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

n) request financial contributions (either in the form of voluntary contributions.....) as any part of the admissions process..."

44. The school (through its representatives) has said that it "recognises that the requirement for an undertaking in respect of voluntary contributions may be in breach of the Code...".

As stated above, the school's "application form" (to which I will refer again below) requires a parent to make an undertaking to pay voluntary contributions. This is clearly a request to pay a voluntary contribution and it is part of the admission process. It therefore breaches the requirement of paragraph 1.9n). I find that this aspect of the arrangements does not conform with requirements relating to admissions.

Details required on the application form

45. Paragraph 2.4a) of the Code says:

"Admission authorities **must not** ask for...

a) any personal details about parents and families, such as.....marital, or financial status (including marriage certificates)".

46. Again, I have been told that "The school recognises that a requirement for a copy of parents' ketubah may be in breach of the Code". The request that a ketubah (marriage

certificate) be provided when the “application form” is returned is a direct breach of the prohibition concerning this in the Code. I find that this aspect of the arrangements does not conform with the requirements relating to admissions.

Other matters

47. The school has told me that the introductory paragraphs to its admission arrangements, which were of concern to me because they implied that the school was only available to children for whom its faith-based requirements were relevant, “will be amended”. This is of course welcome, since as they have been determined the arrangements are unclear and breach the requirement of paragraph 14 of the Code that they be clear.

48. The school has told me that it has always been of the view that its faith designation is “Orthodox Jewish”, referring to a statement in its Funding Agreement, which I have seen, that “The relevant faith body of Broughton Jewish Cassel Fox ...is Orthodox Jewish”. This is unhelpful because “Orthodox Jewish” is not a faith body but a religious denomination, and so this statement does not assist the school concerning either its faith designation or its faith body.

49. I have referred above to the fact that the school is a former voluntary aided school which converted to academy status in 2012, and to the effect of section 6 of the Academies Act 2010 in such a case concerning the school’s faith designation. The school’s legal advisers have been most helpful in researching the school’s history and provided me in December 2023 with a copy of the Designation of Schools Having a Religious Character (England) Order 1999 which came into force on 1st September 1999, in which under section 69(3) of the Act the Secretary of State designated the school (together with a number of others) as one with a religious character of “Jewish”.

50. The school has written to me subsequently (in February 2024) saying that it has corresponded with DfE who are reported as saying that “it is open to schools with Orthodox trust deeds to be designated as Jewish or Orthodox Jewish and remain Orthodox Jewish in ethos”, and has cited the content of the school’s trust deeds made in 1950 and 1962 which refer to it having been “founded for the express purpose of providing Jewish Children [sic] with a strictly orthodox Jewish religious education...”. It says that “In the light of the above we [the school] consider that it will be correct for the school’s amended admission arrangements to retain reference to a religious character of Orthodox Jewish”.

51. 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 (as referred to above) concerning the looked after or previously looked after children who can be given priority in a school’s admission arrangements but does so more explicitly. It does not use the phrase “children of the faith” but sets this out more fully as “children of the same faith as that of the school in accordance with its designation”. I therefore take the view that the wording of the school’s Designation Order is paramount in respect of the specific provision concerning the priority which can be

given to these children, and the question of the school's ethos, which has to do with matters other than its admission arrangements, is a separate matter.

52. I am grateful to the school for its co-operation in seeking to resolve this matter, but I am bound to take the view that its faith designation is "Jewish" and not "Orthodox Jewish". I have noted that in earlier correspondence the school had said that although it sought resolution of this matter it "agrees in principle to make amendments to ensure that priority is only given to children of its particular faith designation", which is helpful.

53. I understand that it would be possible for the school, as an academy school, to seek an amendment to its Designation Order, which would allow it to be designated by the Secretary of State as a school with a religious character of "Orthodox Jewish", and this is a matter for the school. I have set out above the consequences for the compliance of the school's admission arrangements of it having a designation of either "Jewish" or of "Orthodox Jewish", but until such time as its designation is amended (should the school wish to pursue this course) they are those which follow from its existing designation of "Jewish". The arrangements as determined fail to comply with what is required, accordingly.

54. I have set out above the oversubscription criteria which are given in the arrangements. These include priority for some children who are "Orthodox Jewish" and priority for other children who are "Jewish". The arrangements provide a definition of "being Jewish Orthodox" and say that "applicants must provide evidence that the child meets the religious criteria". A section in the school's SIF provides the opportunity for parents to make statements which confirm observance of the three elements of the stated definition of Orthodox Judaism, namely keeping Kosher, observing Shabbos and observing Tznius (the code of modesty in dress). So it is possible for a parent to read the arrangements and understand how the faith-based criteria concerning being Orthodox Jewish will be reasonably satisfied, as required by paragraph 1.37 of the Code.

55. However, the arrangements also give priority to other children on the grounds of faith, and these children are described as "Jewish". The arrangements do not say what is required to qualify a child as being "Jewish" (but not capable of meeting the school's definition of "Orthodox Jewish") in order that they can be given priority over "other children" who are not either Orthodox Jewish or Jewish. Given that Jewish faith schools may not give priority for admission based on membership of the Jewish faith by virtue of an applicant's halakhical Jewishness some other criterion is required and the arrangements do not provide this. The school has said that it believes that this matter is connected with the school's faith designation "since the term "Jewish" may ultimately not be included within the school's admission arrangements".

56. Clearly, if the school did not give priority separately to children on the grounds that they are "Orthodox Jewish" or "Jewish", then the matter would not arise, as the school says. However, the arrangements do so, and fail to make clear how such priority is gained, and so are unclear in breach of paragraph 14 of the Code, and do not satisfy what is required by paragraph 1.37 of the Code concerning faith-based admission arrangements. I hope it will be helpful to the school if I observe that I do not understand its view that a resolution of its

faith designation would assist in any way with this difficulty. I have explained that the arrangements give priority to more than one category of child on the grounds of faith, but do not define each of these. The school's faith designation does not assist with this.

57. The school has helpfully recognised that the arrangements do not include the required statement concerning the admission of children below compulsory school age and concerning deferred entry. The arrangements fail to comply with paragraph 2.17 of the Code.

58. Paragraph 2.4 of the Code says that "...admission authorities ...**must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria...". The school has helpfully agreed that questions included in its SIF concerning siblings who have previously attended the school and about eligibility for the Pupil Premium are not relevant to any of the oversubscription criteria and that it will remove them from the SIF. However, as the arrangements were determined, the SIF breaches this provision of the Code.

59. Paragraph 1.8 of the Code says:

"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair....."

60. I have explained above how the arrangements give priority to Orthodox Jewish children and how the religious activities which are evidence of this status are also set out in the arrangements. The SIF asks parents to attest to their observance of the three elements of observance described above, and also says that:

"To meet the religious criteria you must:

- (i) be able to answer questions in Sections 1 and 2 below positively;
- (ii) obtain an acceptable reference from your Rabbi."

Section 1 asks parents to attest to their observance of the three elements of religious activity, and Section 2 asks them to answer three questions about the school's ethos. I have already said that the questions in Section 2 offend against what the Code forbids in paragraph 1.9a). The declaration which a parent's Rabbi is asked to sign is as follows:

"I confirm that, to the best of my knowledge and belief, the information provided by the family/guardian is correct."

61. In order for the oversubscription criteria which give priority on the grounds of religious observance to be objective in nature, and so to satisfy what paragraph 1.8 requires, the certification of those observances must also be objective. That means that the practices which are attested to by a third party must be capable of being observed, which means that they must consist of public and not private practice. The school has said that:

"...eating in restaurants supervised by the OKA [Organised Kashrus Authority] is a publicly observable practice, and so requesting Rabbinical certification of this practice (so far as it is

observable in public) adheres to the Code. However, the school recognises that observing Shabbos/Sabbath, and eating kosher food more generally, are practices that may take place in private.”

62. However, the arrangements do not require certification of eating in the required type of restaurant, but of eating “only” in such restaurants. Since there is a separate question concerning eating only food which is kosher, I take the question about restaurants to mean that the only restaurants that the parent eats in are those described. Eating there is clearly publicly observable, and a Rabbi may well be able to attest to the fact that a particular parent has been seen to do so. But it is, equally, not possible for a Rabbi, or anybody else, to be able to say that these are the only restaurants the parent frequents.

63. The school has offered to remove the questions concerning kosher eating and Shabbos observance from the SIF, but it does not need to do so provided the attestation which is made is clearly that of the parent themselves attesting to their private observance of the relevant religious observances. The same is true for the question concerning restaurants frequented, but the school may well consider this is a redundant question if a parent is asked to make their own attestation that they eat only kosher food. I observe in passing that I also believe it is possible for Rabbinical certification of public observances to be appropriate in the admission arrangements for a school with a Jewish faith character, provided those practices are clear in nature and conform to matters set out in guidance by the school’s religious authority. I shall say more about this latter point below, but I now record that the arrangements as determined fail to meet the requirements of paragraph 1.8 of the Code because the matters described in section 1 of the SIF are all matters of private religious observance and so are not capable of being attested to objectively by a third party.

64. I was concerned that the school’s website provides parents with what is described as an “application form”, which is not mentioned in the admission arrangements themselves. Parents would not know therefore whether completing it was part of the process of seeking a place at the school, making the arrangements themselves unclear and in breach of paragraph 14 of the Code. The school has helpfully accepted that this is the case. As determined, the arrangements do not comply with paragraph 14 of the Code for this reason.

65. The arrangements refer appropriately to the local authority Common Application Form (CAF) and to the SIF. Section 2 of the Code makes it clear that for all publicly funded schools, parent express their preferences using their local authority CAF, and that some school may need to employ a SIF to acquire additional information necessary for the operation of oversubscription criteria in their arrangements. The school has told me that the information which the “application form” requests about families and about previously attended schools is “for information gathering purposes only” and that it recognises that seeking it on an “application form” may “...create the impression that it is relevant for admissions decisions”. My view is that all of the matters which I have listed above are specifically forbidden by the provisions of paragraph 2.4 or 1.9 of the Code, and that whether or not the school explains what its “application form” seeks to achieve, and whether or not the form is renamed, this is a breach of those provisions of the Code. For the sake of

clarity, any information which the school may find of value subsequent to the admission of a child to the school, but which is not directly relevant to the operation of its oversubscription criteria, should not be sought by it by any means at the time that parental preferences are being considered. Quite apart from the fact that it is not relevant to admissions, it also runs the risk of the school's seeking and holding personal data of children and adults with no lawful basis for doing so.

66. I now come to the matter of the school's faith body. As I have said, the school has expressed itself content with the willingness of the OCR to act in this capacity. The process required for it to be established formally in this capacity is that the school must amend its Funding Agreement by a Deed of Variation. At the time of writing, this has not happened, and as a consequence the school has no designated faith body. As I have said above, I have made clear to the school the consequences of that position in the light of the provisions of paragraph 1.9i of the Code and the ruling by Cobb J (cited above) concerning the need for all religious activities used in school admission arrangements to be specifically "laid out" for such use by its faith body. Since it is also the case, as I have also said, that Jewish faith schools may not give priority based on membership of the Jewish faith by virtue of an applicant's halakhical Jewishness, until such time as the school formally adopts a faith body which can act to provide it with faith-based admission arrangements the school may not employ any in its admission arrangements.

67. My hope is that the school will expedite the formal adoption of a faith body which will then be able to work with it in making the changes to its admission arrangements that will be required to comply with this determination. Given the time which has already elapsed in this case, and the pressing need for the school to provide itself with compliant admission arrangements prior to the deadline of 16 April 2024 for the allocation of primary school places, I will set a deadline of one month from the date of this determination for that to take place.

Summary of Findings

68. I have explained above that, as the school currently has no faith body, it is unable to fulfil the permitted exception in paragraph 1.9i) of the Code which would allow it to take account of religious activities laid out by such a body in giving priority to children on the basis of their or their parents' religious observance.

69. I have also given my reasons for not finding the following matters which were part of the referrer's objection to be in breach of requirements relating to admissions:

- (i) that the arrangements fail to comply with Equalities legislation, and
- ii) that the reduced PAN of 60 contained in the arrangements is unreasonably low.

I have also said why I find the following matters raised by the referrer to be in breach of requirements relating to admissions:

- (i) that parents applying for places are required (via the SIF) to agree to certain school policies as a condition of having their application considered;
- (ii) that parents are also required (via the “application form”) to make a commitment to paying voluntary financial contributions, and
- (iii) that parents are required (also via the “application form”) to provide a copy of their Jewish marriage certificate.

70. I have set out my reasons for coming to the view that the following matters also result in the arrangements failing to comply with the requirements concerning them. That the arrangements:

- (i) contain introductory statements which imply that places at the school are only available to children who can satisfy its religious oversubscription criteria;
- (ii) do not comply with the requirements concerning the priority given to looked after or previously looked after children in view of the school’s faith designation, which is “Jewish”;
- (iii) give priority to children which they describe as “Jewish”, but do not say how such children are defined;
- (iv) do not contain a statement concerning the admission of children below compulsory school age and concerning deferred entry to the school;
- (v) ask (via the SIF) for information which has no bearing on the application of the oversubscription criteria;
- (vi) ask (via the SIF) for Rabbinical certification of practices which do not take place in public, and
- (vii) employ an “application form” whose purpose is not stated and which seeks information which is not required for the application of the oversubscription criteria.

Determination

71. I have considered the admission arrangements for September 2024 for Broughton Jewish Cassel Fox Prim School, Salford in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to three of the matters contained in the referral and in a number of other respects the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

72. 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 set by the Schools Adjudicator. In this case, I determine that this shall take place within one month of the date of this determination.

Dated: 13 March 2024

Signed:

Schools Adjudicator: Dr Bryan Slater